HATE CRIME - CRIME HAINEUX

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GUEST EDITOR - RÉDACTEUR INVITÉ

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EDITORIAL

JOHN WINTERDYK, PhD
Guest Editor

This special issue (SI) is dedicated to the 'hot topic' of hate crime. Since hate crime knows no border, the focus on hate-related crime in Canada is enriched by several articles offering an international viewpoint.

A review of the Ontario Tech University website - "Reading Hate in Canada: Hate Crime Scholarship in Canada" - shows little is being published on the topic despite its prevalence and growing social, cultural, and ethnical diversity. In the opening article, Winterdyk offers an overview of hate crime in Canada. Alongside an historical overview of hate crime, I discuss some of the conceptual implications of it as a social construct, hi-lite trends and patterns, and recommend caution as Canada moves forward in constructing the meaning and intent of hate crime. In the next article, Silver undertakes a nuanced review of the controversy over what constitutes hateful content expression and signals a dire need for a cohesive and collaborative national action plan. Silver contends that law reform initiatives must encompass both legal and social solutions, provide self-regulation incentives for Internet service providers/users, and be Charter compliant.

Lunny's article examines the impact of repealing human rights laws, discussing how such legal changes might impose limits on constitutionally protected freedom of expression. Lunny concludes suggesting a revisiting of human rights remedies and a regulatory partnership with Internet service providers. Faulkner explores the issue of hate crime as regards Canada's LGBTQ community. She suggests that the associated risk of secondary victimization upon reporting hate crimes signals a need to explore police as perpetrators of hate-

motivated bias. Bruckmüller and Linser offer an assessment of hate speech within a European context. In response to increased online hate, the authors discuss the EU focus on practical prevention, awareness-raising, and social-media-platform involvement.

Mercier-Dalphond and Helly draw upon interviewee testimonials and media reports on anti-Muslim crimes to show that Islamophobia issues prevail in Canada. The final non-student article, by Dube, lends another international perspective on hate crime, in India. Acknowledging formal efforts to combat some of the entrenched biases and prejudices evidenced by hate crime throughout her country, Dube concludes with several practical and legal strategies.

The final three articles, by international students, hi-lite the complexity of hate crime worldwide. Mockler's article offers a critical examination of the dual discrimination brought about by racial and homophobic motivations for hate crime in the UK. Hild looks at the unique phenomena of the 'lone wolf' extremist within Germany – a concept that has not been widely explored in the hate crime literature. In the final article, Sahlin looks at the use of hate speech before, during, and after the Rohingya genocide and illustrates how stereotypes created through social group identities can pave the way to genocide.

This SI is limited by the publication's size and, given the complexity of the topic, was never intended to present an exhaustive review or examination of hate crime. However, we trust that the SI will stimulate further inquiry and reflection on how we can effectively combat hate crime.

ÉDITORIAL

JOHN WINTERDYK, PhD
Rédacteur invité

Ce numéro spécial est consacré aux crimes haineux, un sujet brûlant d'actualité qui ne connaît pas de frontières. C'est pourquoi nous traiterons ici des crimes haineux perpétrés au Canada, mais en nourrissant notre réflexion de plusieurs points de vue internationaux.

Un examen du site Web de l'Université Ontario Tech – « Reading Hate in Canada: Hate Crime Scholarship in Canada » – montre que, malgré l'omniprésence de la question et notre diversité croissante, tant sur le plan social, culturel qu'ethnique, les publications traitant de ce sujet sont rares. Dans le premier article, M. Winterdyk donne un aperçu de la situation au Canada. Il brosse un portrait historique des crimes haineux et aborde certaines de leurs implications conceptuelles en tant que construction sociale. Il dégage aussi leurs grandes tendances et leurs schémas et recommande la prudence tandis que le Canada cherche à comprendre la signification de ces crimes et leur intention. Dans l'article suivant, Lisa Silver analyse avec beaucoup de nuances la controverse entourant ce qui caractérise le contenu d'un discours haineux et exhorte le pays à se concerter pour se doter d'un plan d'action national cohérent. Mme Silver soutient que les projets de réforme législative doivent, tout en étant conformes à la Charte, prévoir des solutions juridiques et sociales, ainsi que des mesures incitant les fournisseurs et les utilisateurs de services Internet à s'autoréguler.

Allyson Lunny traite pour sa part des conséquences de l'abrogation des lois relatives aux droits de la personne. Elle se penche sur ces changements législatifs afin d'examiner en quoi il pourrait contraindre la liberté d'expression protégée par la Constitution. En conclusion, Mme Lunny suggère de réviser les recours en matière de droits de la personne et d'établir un partenariat relatif à la réglementation avec les fournisseurs de services Internet. Ellen Faulkner explore la question des crimes haineux touchant la communauté LGBTQ au Canada. Elle évoque le signalement de ce type de crime auprès des autorités et des risques de victimisation secondaire qui y sont associés. Selon elle, ceci atteste de la nécessité d'examiner les corps policiers comme les auteurs de préjugés motivés par la haine. Karin Bruckmüller et Lukas Linser s'intéressent aux discours haineux dans un contexte européen. Les auteurs montrent comment l'Union européenne, pour s'attaquer à l'intensification de ce phénomène en ligne, se concentre sur des mesures concrètes de prévention, sur la sensibilisation et la mise à contribution des plateformes de médias sociaux.

Geneviève Mercier-Dalphond et Denise Helly s'appuient sur des témoignages et des reportages sur les crimes contre les musulmans pour montrer que l'islamophobie est bien présente au Canada. Le dernier article rédigé par une personne qui n'est pas étudiante offre une autre perspective internationale, cette fois sur les crimes haineux commis en Inde. Mme Dube y fait état des efforts déployés officiellement en Inde pour lutter contre les partis pris et les préjugés bien enracinés dans la culture du pays. Elle conclut en exposant plusieurs stratégies concrètes et juridiques.

Les trois derniers articles, rédigés par des étudiants de différents pays, mettent en lumière la complexité des crimes haineux dans le monde. Anna Mockler propose un examen critique de la double discrimination fondée sur des motifs raciaux et homophobes à l'origine de crimes haineux au Royaume-Uni. Marc Hild s'intéresse quant à lui au phénomène particulier du « loup solitaire » extrémiste en Allemagne; un concept très peu exploré dans la littérature sur les crimes haineux. Enfin, Rebecca Sahlin se penche sur le recours au discours haineux avant, pendant et après le génocide des Rohingyas, et illustre comment les stéréotypes liés aux identités de groupe social peuvent ouvrir la voie à un génocide. Sahlin illustre la façon laquelle les stéréotypes créés par les identités des groupes sociaux peuvent conduire à la déshumanisation et ouvrir la voie au génocide.

Ce numéro spécial est limité par la taille de la publication et, compte tenu de la complexité du sujet, ne prétend pas présenter une étude ou un examen exhaustif des crimes haineux. Cependant, nous espérons qu'il suscitera chez les lecteurs et lectrices l'envie de poursuivre la réflexion et de se renseigner sur les moyens de lutter efficacement contre les crimes motivés par la haine.

Hate Crime: Exposing an Age-Old Foe

JOHN WINTERDYK, PhD
GUEST EDITOR: John Winterdyk (PhD) is a widely recognized national and international scholar, the current English Book Review Editor for CCJA's *Canadian Journal of Criminology and Criminal Justice* and a regular contributor to the *Justice Report*.

Guest Editor Dr. John Winterdyk starts off this special issue on Hate Crime with his article offering a broad overview of hate crime in Canada. Looking back to historical origins of hate as a social construct and raising several points for the readers to ponder as they navigate this special issue, Dr. Winterdyk probes the concept of hate crime in Canada by looking at the history, legislation, and explanations that have surfaced since the 1960s. Framing hate crime as closely related to social justice issues and noting that law changes identify an expanding range of hate crimes, Dr. Winterdyk advises caution as Canada moves forward in constructing the meaning and intent of hate crime.

Although the concept and meaning of hate are trapped by social, cultural, legal, and political boundaries, the essence of hate dates from the earliest times. Depending on how broadminded one might want to be about the definition of hate (also used interchangeably with bias and prejudice), it can be related to the ancient phenomena known since the 1800s as tribalism or xenophobia (i.e., racism). Some of the more recent and extreme forms of hate crime include the Apartheid movement in South Africa, the Holocaust during WW II, the genocides of former Yugoslavia and Rwanda, and ongoing genocides in Darfur (Sudan) and of the Rohingya in Myanmar. And, a recent controversial example of hate speech involves the case of a Spanish rapper, Pablo Hasél, who had barricaded himself inside the university to avoid a prison sentence on charges of glorifying terrorism and insulting royalty and the police in his lyrics and on social media (Jones, 2021).

There is no shortage of individual hate/bias crime cases worldwide, and Canada is no exception. A few examples include the 'infamous' case in the early 1990s of former (Eckville) Alberta schoolteacher James Keegstra. He told his students the holocaust never happened before losing his teaching authority and promoted hatred against the Jewish people. Then, the recent case of Jean-Claude Rochefort, who was charged in 2019 with inciting hatred against women on the 30th anniversary of the École Polytechnique mass shooting in Montreal. Consider also the 'borderline' case of former Calgary Flames and Carolina Hurricanes head coach, Bill Peters, who admitted in late 2019 to using racial slurs toward ex-players. Finally, there is the case of a 17-year-old male who police allege "was motivated by the 'incel' (short for "involuntary celibate") ideology, which is rooted in the hatred of women", when he killed a woman at an erotic massage parlour in Toronto (Hayes & Freeze, 2020).

Despite Canada's claim to be a culturally, ethnically sensitive, and otherwise tolerant country that prides itself on respecting diversity and (fundamental) human rights, hate crimes fueled by prejudice are (unfortunately) not rare occurrences. However, hate crime poses an array of civil and legal challenges that make it a contentious and controversial offence that is not easy to prosecute.

Any attempt to reach a uniform definition of hate crime in Canada is well beyond the scope of this special issue. However, since the other articles focus on various aspects of hate crime within a Canadian context, mine will offer a broader

overview of the topic and raise several points to help the reader navigate this special issue. The article will begin by presenting a short historical overview of hate crime in Canada and then briefly summarize the legal position of hate crime and take a glimpse into some of the explanations for this crime. The next section will include a snapshot statistical overview of hate crime, and the article will conclude with some comments that the reader may wish to ponder while reading the other entries.

A BRIEF HISTORY OF HATE CRIME IN CANADA

As most authorities on this offence explain, hate crime is an act motivated by an intolerance or bias towards social, cultural, or demographic differences. The differences can include, among other factors, gender, skin colour and overall facial features and race, religion, sexual orientation, disability, social groups, speech, among other grounds[1].

While acts of prejudice and hatred can be traced back to the Roman persecution of Christians, the term "hate crime" only started becoming part of our 'common-day' lexicon in Canada after the Keegstra case. Yet, national attention had first been drawn to the concern in the 1960s with the rise of extreme right-wing groups and the pervasive circulation of hate literature, most notably in Ontario and Quebec (Kaplan, 1993)[2]. However, when the French and English began to colonize Canada, the Indigenous peoples became the first target here of prejudice-motivated oppression, intimidation, and violence that, despite recent efforts of reconciliation, still prevails (see Monchalin, 2016).

The demographic landscape of Canada has changed considerably since the Europeans first landed on our eastern shores. Today, the country continues to build upon its foundation as a country of people 'from away'[3]. With each passing year, our population becomes increasingly diverse in values, faiths, lifestyles, and ideologies. The move toward being more heterogenous represents an increased risk of hate-related crimes (see Hate crime in Canada…, 2001).

Throughout Canada, incidents of hate crimes continue to disproportionately affect certain people and the communities in which they live. The level of attention by many advocacy groups, scholars, politicians, and social media to hate/bias crime indeed suggests that Canada is experiencing a hate crime epidemic. If the

enactment of Canadian laws reflects social consensus, then the Criminal Code's relatively recent changes would support this supposed trend.

THE LEGAL POSITION ON HATE CRIME

As discussed in detail, in several of the subsequent articles in this issue, according to the Canadian *Criminal Code*, there are three hatred-related offences: 1) sec. 318 deals with the crime of genocide, 2) section 319(1) pertains to the act of publicly inciting hatred that is likely to lead to a breach of the peace, and 3) section 319(2) pertains to the wilful promotion of hatred.

It was not until 1996 that section 718.2 of the *Criminal Code* was amended to provide a clear legal definition of hate crime that made such acts subject to a sentence.

As with all crimes, hate crime is a social construct (i.e., describes a concept as opposed to legal definition) and, hence, subject to debate over whether its definition accurately represents its scope and meaning. This author, among others, argues that hate crime is a misnomer. As noted above, many scholars use 'bias crime' to reflect more accurately what hate crime entails. However, to be more precise, bias behaviour is motivated not by hate but by prejudice and discrimination[4]. Unlike most conventional crimes (e.g., theft, break-and-enter, most forms of assault) which, among other factors, are motivated by greed, opportunity, lust, and politics, hate crime is triggered when an offender feels his/her attitudes, values, worldview, or way of life are somehow being threatened.

Since our legal system is premised on the classical and neoclassical criminal justice models, our approach focuses on the crime instead of the criminal (i.e., a positivist model of justice). This poses an exciting challenge for the legal system as the language used to define hate crime is moralistic. As some scholars have noted, the legal definition operates as a 'symbolic statement' to reinforce established pro-social values. In so doing, it risks diminishing perceptions of victimization of those targeted as well as the force or validity of their moral claims (see, for example, Jacobs & Potter, 2003; Webking, 1995).

This assertion risks being taken to another level of abstraction that could further conflate the meaning and intention underlying any crime that could

be motivated by some form of latent prejudice or intolerance. And there are many; for example, victims targeted because they are tall/short, weak/strong, rich/poor, cocky/passive, among other dualisms. The legal train has left the station, however, and the criminal justice system and lawmakers need to exercise caution that legislating hate crime laws does not become a political tool for setting morality standards that further 'marginalize/subjugate' certain groups/sectors of society (see Russell, 2018). Furthermore, we risk opening Pandora's box of other behaviours that may be more difficult to sanction (e.g., prejudice against alternative lifestyle preferences or bias against people who dress in a non-conventional manner) (see Jacobs & Potter, 2003).

WHY DO PEOPLE ENGAGE IN HATE CRIME?

The literature is rich with various theories and explanations as to why people engage in hate crime or bias acts – be they physical or verbal. For example, some scholars use Robert Merton's strain theory, while others apply Travis Hirschi's general theory of crime. Still, others conform to Barbara Perry's (Canadian) structural action theory; yet each of these sociological perspectives offers an objective framework for understanding hate crime phenomena.

While the explanations, as mentioned above, focus on the nature of the act and who the target is, the pioneering research of the esteemed Yale psychologist Mahzarin Banaji illustrates how cognition may play a role in understanding hate crime, prejudice. Banaji observed that prejudices (i.e., 'a negative (irrational) attitude or opinion about a particular group or class or people') are innate feelings in all of us. Banaji notes that prejudice generally resides in our subconscious mind and that everyone has unconscious negative stereotypes and other socially constructed beliefs[5]. Hence, depending on how broadly one defines prejudice, practically everyone holds prejudiced views and opinions. If so, this means that whenever a crime involves a perpetrator and victim who identify as being from a different group, cultural, and socio-economic background, the offence could be characterized as a hate crime. The FBI has identified four main reasons why people commit a hate crime. These include the thrill-seekers, who are often "driven by an immature itch for excitement and drama", or the defensive hate-crime offender, who sees themselves defending something personal (e.g., territory, religion, & ideology). Thirdly, the retaliatory offender is retaliating against a perceived slight or wrong. The last type, those on a mission, is considered the least common type and see themselves as 'crusaders' (e.g., Marc Lépine) (Burke, 2017).

TRENDS AND PATTERNS OF HATE CRIME

In January 2019, a poll of 1,519 Canadians by Leger Marketing found that 60 per cent of Canadians have seen "hateful or racist speech on the Internet" (Abedi, 2019). The National Council of Canadian Muslims website includes a virtual map charting the reported anti-Muslim hate crime and racism incidents since 2013 (see www.nccm.ca/map/#). Although the type of experiences has evolved, vandalism threats and acts remain the most common forms of hate crime expression. More recently, in the aftermath of the Novel Coronavirus outbreak (much like the aftermath of the SARS outbreak in 2003), there has been a spike in hate crime taking the form of racist 'violence' against people of Chinese ancestry (Heng, 2020).

Between 2014 and 2017, total police-reported hate crime steadily increased (from 1295 to 2073) before declining in 2018 (1798 cases). Despite the attention given to hate crime, the official incident rate ranged from a low of 3.7 per 100,000 population in 2014 to a high of 5.7 per 100,000 population in 2017. In 2018, approximately 43 per cent of the motives for reported hate crime involved race or ethnicity. This was following by religious-oriented hate crime (Moreau, 2020). As with most crime categories, however, there was considerable variation in rates of hate crime incidents across the major cities. The rates in Ontario and Quebec tend to be higher than the rest of the country. Since, proportionately, there is greater diversity in these regions than the rest of the country, this would appear to speak to the challenges of living in a culturally diverse society.

While official statistics provide us with some insight into the trends and pattern of hate crime in Canada, it is a reasonably well-documented fact that the 'dark figure' (i.e., unreported cases) remains high. According to official statistics, the situation is further compounded by the fact that the police solved around 28 percent of hate crime incidents in 2017 compared to approximately 40 per cent of all Criminal Code violations. As one of Canada's leading academic experts on hate crime, Barbara Perry, observed when

asked to comment on this discrepancy… "it suggests a lack of attention and a lack of care" by the police to solve hate crime incidents (Grant, 2019).

CONCLUDING THOUGHTS

While such welcomed research-focused facilities as the Ontario Tech University's "Centre for Hate, Bias and Extremism" works to identify and counter barriers to social inclusion; we must bear in mind that while most politicians and the public are easily convinced to combat hate crime and support hate crime laws, careful consideration needs to be given to how we respond to social, moral indignations or expressions of hate. Hate crime laws or any condemnation of speech or expression will generate conflict and social strain, which risks increasing intolerance, especially as Canada becomes more diverse across a wide range of factors.

While everyone, at a rudimentary level, knows what hate, bias, and prejudice mean, the concept of hate crime remains contentious and controversial. Depending on one's frame of reference, hate crime remains a subjective and potentially biased construct[6]. Therefore, congruent with the ideas of the social bonding theory of Travis Hirschi, while the theory suggests that citizens of a country value various norms that identify who and what we stand for (i.e., society/culture). However, as evidenced by the law changes that identify an expanding range of hate crimes, which is reflected in the increasing hate crime incidents, the offence is increasingly becoming a diverging issue. Moreover, as Jacobs and Potter (2003) observe, hate crimes serve to fracture our society further. Hence, as we move forward, we need to remain attuned to how we construct the meaning and respond to hate crime. While we may never be able to eliminate hate crimes or prejudice, as we continue to explore ways to control hate crime, we may want to reflect on some of the issues discussed not only in this article but throughout this Special Issue. ■

NOTES

1. For a precise, Canadian legal definition of hate crime, see section 718.2 of the *Criminal Code*.

2. In response to various concerns about hate propaganda at the time, in 1965, Prime Minister Lester Pearson appointed a Special Committee on Hate Propaganda in Canada (a.k.a. "Cohen Committee"). Among other recommendations, the Committee proposed three new offences be introduced into the *Criminal Code*: advocating genocide, inciting hatred, and willfully promoting hatred (see Kaplan, 1993). Ironically, the last racially segregated school in Nova Scotia was closed until 1983 in Guysborough County.

3. A phrase used in eastern Canada to describe those who are not from the region.

4. Prejudice has been defined as a negative pre-judgement of individuals or groups, usually because of ethnic, cultural, religious, or racial differences. Discrimination is the (intentional) exclusion of individuals, groups, or organizations from participation in society.

5. According to the novel work of Osagie Obasogie, a law professor at UC Hastings, although we appear to be hardwired for prejudice, we need to remain mindful that human behaviour is more complex as acts of hate crime need to consider how social, political, and economic developments can influence prejudicial judgments about other (Leu, 2015).

6. For example, even though Marc Lépine, who was responsible for the Montreal Massacre in 1989, and openly admitted his hatred for 'feminists', Scott (2011) found that after examining the coverage of the case, "few identify this crime as a hate crime" (p. 96).

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RÉSUMÉ

Hate Crime: Exposing an Age-Old Foe

JOHN WINTERDYK, PhD
Rédacteur invité (36.1)
Mount Royal University, Calgary (AB)

John Winterdyk, rédacteur invité, amorce ce numéro spécial sur les crimes haineux en offrant une vue d'ensemble de la situation au Canada. Tout en explorant les origines historiques de la haine en tant que construction sociale et en soulevant plusieurs pistes de réflexion pour les lecteurs et lectrices, M. Winterdyk approfondit le concept de crime haineux au Canada en abordant l'histoire, les lois et les interprétations qui ont émergé depuis les années 1960. Considérant que les crimes haineux sont étroitement liés aux questions de justice sociale et constatant que les changements législatifs révèlent l'existence d'un éventail croissant de ce type de crimes, M. Winterdyk recommande la prudence au moment où le Canada cherche à comprendre la signification de ces crimes et leur intention.

Docteur en philosophie, John Winterdyk est un universitaire de renommée nationale et internationale. Il est le rédacteur des recensions, livres anglais, de la *Revue canadienne de criminologie et de justice pénale* de l'ACJP et contribue régulièrement à la revue *Actualités justice*.

Digitizing Hate: A National Response

LISA SILVER
Associate Professor, Faculty of Law, University of Calgary
The author would like to acknowledge the assistance of her student research assistant Saranjit Dhindsa.

Where hateful content is not tolerated in the news media, it seems much more acceptable when it is digitized and delivered through social media on the Internet. This tolerance to online hate content signals a dire need for a cohesive and collaborative national action plan to eradicate the digitizing of hate. Suggesting a multi-disciplinary and international scope for such a plan and suggesting something along the lines of the government's National Action Plan to Combat Human Trafficking (NAPEOH), Silver also contends that law reform initiatives around Hate Crime should not merely ban hate content but must provide self-regulation incentives to Internet service providers/ users, as well as being Charter compliant and evidence-based to ensure fair, practical and effective laws especially when it comes to online hate. Posting legislation as only part of the solution, Silver also addresses the need for the plan to encompass both legal and social solutions.

INTRODUCTION

Imagine opening your (digital) newspaper and finding an article, advertisement, or comic offering derogatory or hateful commentary towards racialized communities. No doubt, a person's initial reaction would (most likely) be one of disbelief – that the news agency would allow such racist and abhorrent speech to be published. Your next response might be to report the conduct, either to the responsible media outlet or to a law enforcement agency. Whatever your reaction, it would likely demand an immediate response. Very few of us would tolerate hateful content in their news. However, digitizing that same hate-filled commentary and posting it on social media makes that visceral reaction disappear. When we digitize hate, we seem to tolerate, accept, or worse, not 'see' it.

This article will briefly outline the increasing problem of online hate content and present a formulation of a cohesive and collaborative national action plan to eradicate the digitization of hate.

THE "AUTONOMOUS" INTERNET COMMUNITY

Through the Internet, social media creates online "autonomous" communities that are unbounded by geography but connected "by consciousness, ideology and desire" (Grundmann, 1984, p. 23). In cyberspace, the free exchange of ideas is encouraged and celebrated. Consistent with this attitude is minimal public or private regulation or oversight of online communities. This openness creates positive spaces for marginalized voices who would not otherwise have access to mainstream media and political institutions. However, it also provides a wide-ranging normalized platform for hate speech and racist content targeting minority groups (Cohen-Almagor, 2018). As a safe space for collective and individual expression, the Internet makes it a perfect breeding ground for hate speech and other racist content.

Online hate speech is often tolerated or dismissed as non-violent actions or "free speech" activities that are not overtly "harmful". Recent studies, however, have shown this to be untrue. Worse still, online hate is not confined to the online community. Chan, Ghose, and Seamans (2016) found troubling links

between Internet access and offline hate crimes. More recent studies confirm these links, particularly in connection to social media (Williams, Burnap, Javed, Lui, & Ozalp, 2020). This suggests digitized hate is not merely a discrete event, which can be easily dismissed or casually buried in cyberspace; instead, it is a dangerous phenomenon with severe 'real-world' (i.e., offline) repercussions.

THE STATISTICS

As a broad group of offences involving violent and non-violent acts, hate crimes are only a small portion of Canada's many kinds of crime. In 2018, police-reported the second-highest number of hate crimes since 2009 (Moreau, 2020). Disturbingly, violence-related hate crimes against Indigenous and Muslim populations disproportionately affect female victims (Moreau, 2020). Approximately 5% of these reported hate crimes occurred in cyberspace (Moreau, 2020). The most popular form of reported cyber-hate crime is violence; uttering threats makeup 37% of online hate crimes (Moreau, 2020). This statistic is concerning, considering most hate crimes are non-violent.

There is no doubt that Canadians are committed to Internet use. In 2018, 91% of Canadians, 15 years of age or older, were Internet users, and of those users, 75% used social networking websites (Statistics Canada, 2018). Online users are particularly vulnerable to exposure to hate content. According to a 2018 survey conducted by the Association of Canadian Studies (ACS), 60% of Canadians have encountered online hate speech directed towards various racial, ethnic, religious, and LGBTQ groups (ACS, 2018). Young people are far more likely to be exposed to online hatred, with 81% admitting they see it often or sometimes (ACS, 2018). A 2020 survey conducted following the recent anti-racism demonstrations triggered by the George Floyd incident shows a marked desire for social media providers to block or remove hate messaging (Ipso, 2020). Despite this concern, there is tension between calls to regulate hate content and free speech ideals (ACS, 2018). In the 2018 ACS-Leger survey, respondents were close to evenly split on whether banning hate speech constitutes a threat to free speech.

THE PROBLEM

Considering the high percentage of Canadians who have observed hate content online, these statistics

suggest a disconnect between reported cybercrime and Internet realities. One explanation could be the under-reporting of cybercrime by marginalized and racialized groups and individuals who tend to mistrust the justice system. Another reason could be that cyberspace itself depersonalizes relationships and seems to turn cyberhate into a faceless and anonymous crime. The problem is also inherently related to inconsistencies in how police identify, classify and code hate crimes committed against intersectional identities (Balgord & Elghawaby, 2019).

Other difficulties are found in the limitations of reporting online hate incidents to the police. Police have inadequate resources to respond to cybercrime, including investigation and enforcement capacity (Rowbottom, 2017). Many police agencies have cybercrime divisions, but such expertise is costly. It requires state of the art technology and the expertise to utilize it effectively. Moreover, investigating online crime requires constant innovation to match ever-evolving technology. Prosecution services face similar capacity and sustainability issues. When resources are scarce and must be prioritized, technically complicated and time-consuming cybercrimes are approached cautiously.

The law, too, is a barrier; not all online hate content constitutes a crime. The criminal law is a blunt instrument to be used sparingly. Criminal offences are tightly circumscribed by legal principles, judicial interpretation, and the *Criminal Code*'s confines, making prosecution and conviction for online crimes difficult. Overlaying the narrow definition of hate crime are societal tensions created by the public's desire for protection, which minimally impacts free expression protected under the *Charter of Rights and Freedoms*. Finally, the cyber quality of online hate crime creates further complexities. Even if the crime makes it to the courtroom, the evidentiary rules on social media evidence's admissibility are unclear (Silver, in press).

Outside of the criminal law, legislative attempts to regulate the Internet are mired in controversy. Politicians, Internet providers, and social media corporations are often at odds over the concept of net neutrality or open access and adequately protecting Internet users. Regulating the Internet is a complex issue that tends to obscure rather

than illuminate the best response to eradicating online hate.

LEGISLATIVE REFORM

Considering the legal constraints, downloading protection against hate content onto the criminal justice system cannot be the only option. This does not mean legislative responses are not useful. Instead, what is needed to at least help minimize online hate content is a broad range of criminal and regulatory legislation (Hawdon, Oksanen & Räsänen, 2016). Such legislative efforts should not merely ban hate content but provide self-regulation incentives to Internet service providers and users. One such approach can be found in the scholarship of the U.S. lawyer and behavioural economist Cass Sunstein, who advocates for the targeted use of regulatory "nudges" to change behaviour in a non-adversarial manner (Sunstein, 2014).

Law reform initiatives must also be *Charter* compliant. The Charter is a normative document that reflects Canadian society's fundamental values, requiring the nuanced balancing of rights. All legislative responses to online hate content must keep this delicate balance in mind. Therefore, such laws must be connected to clear objectives, minimally impair *Charter* rights, and be clearly defined.

Finally, any legislative responses must be evidence-based, with researchers working alongside policymakers to create reasonable, practical, and useful laws. Such a response can only be achieved by overcoming the tendency to "silo" the conversation on hate crime (Perry, Perry, Schweppe & Walters, 2016). This is particularly true for online hate, which resides in an infinite space. Much can be learned by employing a multi-disciplinary and international scope.

THE SOLUTION

Law reform is needed – but it cannot be the only response. The solution to eradicating online hate requires a strategic and evidence-based vision encompassing both legal and social solutions. Some tools are already in place to assist in the search for a safe and hate-free Internet community. For instance, community-policing initiatives, such as the ReDirect program, offer alternatives to the criminal justice system for dealing with disenfranchised individuals (Calgary Police Service, 2020). There is

also a movement towards collaboration between researchers and social media corporations, such as the recent partnership between the Centre for Hate, Bias and Extremism - and Facebook. Social responsibility considerations are also beginning to change online behaviour, as more Internet service providers promote anti-hate content policies (Laidlaw, 2017). There are robust, integrated teams investigating these online crimes for specific online criminal behaviour, such as child pornography.

Additional tools can be found on the federal level, such as Canada's Digital Charter's recent implementation with ten working principles that include freedom from hate and violent extremism (ISED, 2019). Similar commitments have been made in the government's response to racism and discrimination (Canada Heritage, 2019). There are also specific recommendations outlined in the House of Commons Standing Committee on Justice and Human Rights Report, *Taking Action to End Online Hate* (JUST, 2019). The Report has generated further government-ordered studies to regulate online media platforms and Internet service providers (CHPC, 2020). Consultations have also begun to create different legal remedies for online hate victims, including changes to the *Criminal Code* and human rights legislation (MoJAG, 2020).

Despite these tools, Canada does not have a fully integrated approach to eradicating online hate content. The first step requires leadership from the federal government to create and implement a cohesive action plan. A model for this can be found in the government's National Action Plan to Combat Human Trafficking, which creatively leverages social, legal, and international responses (Public Safety, 2012). To be successful, this proposed "National Action Plan to Eradicate Online Hate" (NAPEOH) must be adequately funded. Moreover, the NAPEOH must be a joint effort of all levels of government. As with the Human Trafficking response, each province should be encouraged to create a comprehensive regional approach to align local efforts. This will require numerous stakeholders' participation, including social services, community organizations, policing, the legal community, Internet and social media providers, politicians, academics, and researchers.

The key to the action plan's success is the vital need for collaborative consistency on both a national and

international scale. The NAPEOH must also look outside of Canada to fulfill international human rights obligations and learn from other jurisdictions' experiences. While on the Internet, we have one foot in our originating state as we surf across the globe. Any Canadian response must be mindful of this global reality.

The NAPEOH must be filled in with clearly defined and attainable action items through this integrated and collaborative approach. Some such actionable initiatives are already in place but need the structure and support of the NAPEOH. Other initiatives have not explicitly been actioned but can be found in the various government consultations and recommendations. These are initiatives that are ready to be crystallized into the plan. Finally, there are many excellent ideas from the various stakeholder groups waiting to be tethered to a coherent and robust framework.

CONCLUSION

The Internet and the social media communities flourishing within it are an integral part of Canadian society. It has fundamentally changed the way we live our daily lives. We look to the Internet to inform, entertain, and educate us. We look to social media to create a community; to provide a safe space for collaboration and expression with others. However, we also look to our government and the laws it creates to protect our online experience's integrity. This includes protecting us from the harmful effects of online hate content while allowing for the freedom online interaction encourages. To create the right balance, we need a national action plan specifically targeting online hate content with practical and sustainable goals integrating existing work on the issue. This action plan must be flexible, proactive, and accountable. We have legal and non-legal tools available, and we have the desire to do it. It is time to end the digitizing of hate. ∎

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RÉSUMÉ

Digitizing Hate: A National Response

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Si les contenus haineux ne sont pas tolérés dans les médias d'information, ils semblent beaucoup plus acceptables lorsqu'ils sont diffusés dans les médias sociaux. Cette tolérance à l'égard des contenus haineux en ligne révèle un besoin urgent de se doter d'un plan d'action national cohérent et concerté afin d'éradiquer la numérisation de la haine. Mme Silver suggère qu'un tel plan devrait avoir une portée multidisciplinaire et internationale, et s'inspirer du Plan d'action national de lutte contre la traite de personnes du gouvernement fédéral. Elle soutient également que les initiatives en matière de réforme législative concernant les crimes motivés par la haine ne devraient pas se contenter d'interdire les contenus haineux. Elles devraient aussi prévoir des mesures incitant les fournisseurs et les utilisateurs de services Internet à s'autoréguler, et ce, tout en étant conformes aux principes de la Charte et en s'appuyant sur des données probantes afin de garantir des lois équitables, pratiques et efficaces, notamment en ce qui a trait à la haine en ligne. Selon l'auteure, la législation n'est qu'une partie de la solution et le plan d'action devrait comporter des solutions aussi bien juridiques que sociales.

Why *Is It So Hard* to Prosecute Hate Speech?

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*As indicated by its title, this article explores why there have been so few hate speech convictions in Canada even though laws were enacted **starting in 1970**. Offering an overview of philosophical debates about freedoms, Dr. Lunny examines the relative impact of repealing the human rights laws in 2013. The article discusses how the legal changes **might impose** limits on constitutionally protected freedom of expression and several other controversial and related issues. Describing how criminal laws are also limited by the rights to freedom of speech and face jurisdictional challenges concerning hate speech on the Internet, the author concludes by suggesting a revisiting of human rights remedies and a regulatory partnership with Internet service providers.*

INTRODUCTION

Why *is it so difficult* to successfully prosecute a criminal charge of hate speech? Since the enactment of Canada's hate speech laws in 1970, there have been perhaps a dozen convictions under Canada's "hate propaganda" laws. Although numerous civil charges of 'hate speech' were brought under section 13 of the *Canadian Human Rights Act*, the section was repealed in 2013. The repeal was due to broadening the restriction to the Internet and amending remediation to include substantial financial penalty contrary to human rights remedy ethos. Federally, with section 13's repeal, criminal law is the only vehicle to combat hate speech.

This article provides answers to the opening question by arguing two main ideas. First, Canada's hate speech laws were designed to balance the prosecution of hate speech to protect our right to freedom of expression. Secondly, hate speech on the Internet proves to be a slippery phenomenon for our criminal hate speech laws.

COHEN REPORT 1966

In 1965, the Special Committee on Hate Propaganda was created "to study and report upon the problems related to the dissemination of varieties of 'hate propaganda' in Canada" (Cohen, 1966, p. 1). Advisory in scope, the Cohen Committee recommended that changes to the *Criminal Code* were necessary to respond to an increasing rise in anti-Semitic and anti-Black incidents, human rights advances, and cultural shifts in understanding mass communication.

Its recommendations called for three new criminal offences: the advocation or promotion of genocide against an identifiable group, the public incitement of hatred against an identifiable group that would likely lead to a breach of the wilful peace promotion of hatred against an identifiable group. These provisions effectively restrict expression by setting limits to that expression and have presented a challenge to the constitutionally protected right of freedom of expression.

THE CONFLICT BETWEEN GENERALLY ACCEPTED CANADIAN MULTICULTURAL AND EGALITARIAN SOCIAL VALUES AND THE LIBERTARIAN VALUE OF FREEDOM OF EXPRESSION

In a liberal democratic society, such as Canada's, the hate propaganda debate's traditional framing is structured along with two conflicting positions: the libertarian position and the egalitarian position (Kallen, 1991). The libertarian argument established speech and its free expression as taking "precedence over all other rights and freedoms because all

rights and freedoms depend on the existence of an effective right of dissent" (Kallen, 1991, p. 47). The right of citizens to speak freely and to voice criticism without fear of government reprisal, censorship and police action is understood to be a cornerstone of a liberal democratic society. Embedded in the liberal idea of free expression is the Miltonian dictum "let truth and falsehood grapple". The idea here is grounded in the belief of rationality, whereby the free exchange of ideas will ultimately lead to a rejection of falsehoods and a recognition of truth.

Another libertarian defence of free speech claims that free expression provides a societal cathartic safety valve (Rosen, 2000). The idea behind this notion of catharsis is that minor expressions of hate speech allow strain and anger, emotions behind that speech, to find release before building to extremes of conduct and violent action. Another perspective is that, in the criminalization of speech, the trial provides a dedicated platform for disseminating the accused's ideas more broadly (Rosen, 2000, p.5).

Thus, the libertarian approach may be understood as a guarantee and protection of individual liberties regarding free expression and speech. The protection of these liberties creates and strengthens a democratic liberal society.

Conversely, the egalitarian perspective reflects principles and values enshrined in the *Canadian Charter of Rights and Freedoms* (The Constitution Act, 1982). In balancing rights, the *Charter* guarantees the fundamental right of freedom of thought, belief, opinion, and expression, including freedom of the press and other communication media (s.2(b)). Simultaneously, setting reasonable limits prescribed by law to said rights and freedoms can be demonstrably justified in a free and democratic society (s.1).[1]

However, internationally, Canada is also a signatory to numerous human rights conventions that "oblige Canada to combat racism and the advocacy of genocide and racial superiority" (Rosen, 2000, p. 5). Noting how the *Charter* "shares the values of other post-war rights-protecting instruments, which promote stable democratic political functioning by rejecting excesses that can deprive certain members of the community of their self-dignity and the will to take part in public life" (Weinrib, 1991, p. 1432), Weinrib distinguishes the Canadian policy and

jurisprudential stance of freedom of expression from that of the United States. "This debate reveals as acutely as possible the conflict between generally accepted Canadian multicultural and egalitarian social values and the libertarian value of freedom of expression" (Rosen, 2000, p. 2).

CRIMINAL CODE SAFEGUARDS FOR EXPRESSION

There are several safeguards protecting expression built into the *Criminal Code* provisions. The first is that the impugned speech only catches public expression; private conversation, no matter how despicable, is not subject to criminal prosecution. Secondly, the Attorney General's consent must be obtained prior to any laying of charges related to advocating genocide, the willful promotion of hatred, and warrant of seizure. Thirdly, there are four defences available to those charged under the intentional promotion of hatred and these offences have no minimum punishment:

• the communicated statements are true;

• an opinion or argument was expressed in good faith and either concerned a religious subject or was based on a belief in a religious text;

• the statements were relevant to an issue of public interest and were on reasonable grounds believed to be accurate; and

• the comments were meant to point out matters that produced feelings of hatred toward an identifiable group and were made in good faith for their removal.

R. V. KEEGSTRA: A DEFINING LEGAL CASE

One of the first cases to test the constitutionality of s. 319(2) of the *Criminal Code*, "unlawfully communicating statements, other than in private conversation, which willfully promoted hatred against an identifiable group", was that of *R. v. Andrews* in 1990. Significantly, *Andrews* was a companion case to *R. v. Keegstra* (see Winterdyk's article in this special issue).

The accused were Don Andrews and Robert Wayne Smith, organizers of the white supremacist Nationalist Party of Canada and the *Nationalist Reporter* publishers. The police seized written material, including letters written by subscribers, subscription lists and mimeographed sticker cards containing such racist messages as "N****r go home", "Hoax on the Holocaust", and "Hitler was right. Communism is Jewish" (*Andrews*, p. 874). The

materials seized expressed white supremacist, white nationalist, and anti-Semitic ideologies calling for a "white Canada". At trial, the district court judge concluded that the material under examination "[c]learly … indicates not only hatred but hatred to an unbelievable degree" (*R. v. Andrews*, p. 878).

As in *Keegstra*, the question before the Supreme Court in *R. v. Andrews* was whether s. 319(2) of the *Criminal Code* violated section 2(b) of the *Charter*, and if so, whether the violation was justifiable under s. 1's declaration that any limits to Charter rights must be shown to be reasonable in a free and democratic society. The Court's reasoning mirrored that in *R. v Keegstra*. First, s. 2(b) protects all expression content, except for expression communicated directly through physical harm. For the majority, Dickson C.J. wrote, "Hate propaganda is not analogous to violence. It conveys a meaning that is repugnant, but the repulsion stems from the content of the message and not from its form".

In *R. v. Keegstra*, the Court noted that "The large and liberal interpretation given to freedom of expression indicates that the preferable course is to weigh the various contextual values and factors in s.1 of the *Charter*" which (i.e., s.1) "both guarantees and limits *Charter* rights and freedoms by reference to principles fundamental in a free and democratic society" (*R. v. Keegstra*). The Court stated that the hate propaganda law prohibiting the willful promotion of hatred was a proportional response to Parliament's valid objective of protecting target group members and fostering harmonious social relations in a community dedicated to equality and multiculturalism. Hence, the Court determined that the section did not suffer from overbreadth or vagueness; instead, it possesses definitional limits acting as safeguards to ensure it captures only expressive activity that contravenes Parliament's objective. The Court further observed that the word "wilful" imports into the offence a stringent standard of *mens rea*, which significantly restricts the prohibition's reach. Therefore, the Court conclusively held that while section 319(2) violated the *Charter* but was saved under s.1 as a reasonable limit prescribed by law can be demonstrably justified in a free and democratic society.

BROADCASTING ACT AND IMMIGRATION ACT: OTHER MECHANISMS REGULATING HATE SPEECH

At a federal level, several other legal mechanisms regulate hate speech in Canada. Regulations under the *Broadcasting Act* prohibit any licensee from broadcasting or distributing programming that contains: any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or group or class of individuals to hatred or contempt based on race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability (Section 8, *Broadcasting Distribution Regulation*, SOR/97 555). While these regulations apply to radio, broadcast television, specialty services, and pay television, Internet-based communications do not fit the definition of 'broadcasting' (Media Smarts).

Under the *Immigration Act*, customs officials can stop hate material from entering Canada and refuse entry to individual hate mongers. This only applies to the movement of physical materials across the border, but hateful content purchased online and shipped to Canada may be confiscated under this legislation (Media Smarts).

SECTION 13 OF THE *CANADIAN HUMAN RIGHTS ACT*

Under the *Canadian Human Rights Act (CHRA)*, a provision under section 13 dealt with the repeated communication of discriminatory messages by telephone. In the *Special Report to Parliament*, the Canadian Human Rights Commission acknowledged that "section 13 has always been controversial, but particularly so since it was amended in 2001 to include hate on the Internet" (Rosen, 2009, p. 1). With the amendment, the impugned section made it a "discriminatory practice for anyone to communicate by telephone, by a telecommunication undertaking, or by a computer-based communication, including the Internet, any matter repeatedly that is likely to expose anyone to hatred or contempt because he or she is a member of a particular identifiable group". Section 13 did not apply to print publications unless a print article was posted on an Internet site (Walker, 2018, p. 9). As a subject of controversy, governmental study, and reform for years, section 13 would be repealed in 2013.

Both the *Charter* and the CHRA are rights protecting and enshrining legal mechanisms. There are notable differences, however, that require explanation, particularly concerning hate speech. The *Charter* applies only to the actions of the state; so, for example, the *Charter* protects citizens from actions of the state as in the criminal restriction prohibiting

the advocation of genocide, the public incitement of hatred likely leading to a breach of the peace, and the willful public promotion of hatred. In this example, guaranteed protections and balance are found for the defendant in s. 2(b) of the *Charter*, which guarantees freedom of expression.

The *CHRA* and its provincial human rights provisions apply to other individuals, including corporations – namely private-sector actors. Here a citizen could seek remedy from any individual or business that, for example, posted a sign denying accommodation to a racialized minority.

The *CHRA* is the principal human rights statute in the federal sector. It generally applies to federal government departments and agencies, Crown corporations and federally regulated businesses. The *CHRA* prohibits an employer or service provider under federal jurisdiction from carrying out discriminatory practices based on specific prohibited grounds: race, national or ethnic origin, colour, religion, age, sex (including pregnancy and childbirth), sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability (including previous or present drug or alcohol dependence), and pardoned conviction (Walker, 2018, p. 8).

Another distinction between the *CHRA* and the *Charter* concerns the restriction on speech. The *Criminal Code* is punitive; whereas "the purpose of hate speech prohibitions in a human rights system is to rectify discriminatory practices and to compensate the victims of discrimination for the harms they have suffered as a result of that discrimination" (Hamilton and Robinson, 2019, pp. 137-8). In criminal law, the onus lies upon the state to prove or disprove any fact, and the burden of proof is high. Whereas in human rights law, the intent to discriminate is not a necessary element; what is critical is the discriminatory effect or impact of the offending act.

CONCLUDING REMARKS: HATE SPEECH ON THE INTERNET

Hate speech on the Internet is proving to be a protean and evasive phenomenon for our criminal hate speech laws. The magnitude of Internet communication is overwhelming, and the content of that speech is becoming increasingly coded and elusive. Canada's law enforcement and legal actors lack the resources and training to effectively combat hate on the Internet (Housefather, 2019).

Furthermore, Canada faces jurisdictional challenges as we cannot prosecute outside of Canada. Freedom of expression is a guaranteed right under the *Charter*, and thus a restrictive response to Internet hate speech must adhere to our laws and legal norms. Solutions beyond a criminal law response might include revisiting civil remedies and a regulatory partnership with Internet service providers. ■

NOTES

1. Other noteworthy and related sections include s.27 that recognizes Canada as a multicultural society and s.7 that guarantees the individual's right to be equal before and under the law.

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RÉSUMÉ

Why *Is It So Hard* to Prosecute Hate Speech?

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Comme son titre l'indique, cet article explore les raisons pour lesquelles il y a eu si peu de condamnations pour des propos haineux au Canada, et ce, même si des lois ont été promulguées à cet effet dès 1970. Offrant un aperçu des débats philosophiques sur les libertés, Mme Lunny se penche sur les effets relatifs de l'abrogation des lois relatives aux droits de la personne en 2013. L'auteure examine comment les changements législatifs pourraient imposer des limites à la liberté d'expression protégée par la Constitution, de même que plusieurs autres questions controversées et apparentées. Décrivant comment les lois pénales sont également limitées par les droits à la liberté d'expression et sont confrontées à des défis juridictionnels en ce qui a trait aux propos haineux sur Internet, Mme Lunny suggère en conclusion de réviser les recours dans le domaine des droits de la personne et d'établir un partenariat en matière de réglementation avec les fournisseurs de services Internet.

Policing of LGBTQ Communities in Canada

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Even though LGBTQs are the third most likely group targeted for hate-motivated crime in Canada, reports Faulkner, they face significant barriers to good police relations. As a result, they tend to underreport hate crime incidents not only to the police but also to community organizations for fear of homophobic responses. In this vein, Faulkner points out that the issues surrounding hate crimes related to LGBTQs are far-reaching and intrinsically related to social justice. According to Faulkner, the associated risk of secondary victimization upon reporting hate crimes signals a need to explore police as perpetrators of hate-motivated bias in Canada. This issue has been well documented if not resolved in the U.S. Among other recommendations, the author notes the need to develop an education module to sensitize police to the issues facing our communities around anti-LGBTQ violence to increase their capacity to deal with our communities appropriately, thus increasing LGBTQ access to justice.

INTRODUCTION

Imagine you are a victim of anti-LGBTQ violence (AGLV), and the police you turn to for help revictimize you? This article reports on data collected between 1991 to 2004 from six community-based studies across Canada. The data reveal that LGBTQs have experienced harassment and physical attacks from the police. As a result, they distrust police and under-report hate crimes due to fear of secondary victimization. The data also reveal that LGBTQs know of others who have been victimized and feel the need to modify their behaviour to prevent future attacks. Despite numerous police and criminal justice initiatives to address these issues, there is still evidence that LGBTQs face barriers reporting hate crime incidents related to less-than-adequate police relations.

THE PROBLEM

Hate crime data collected through the Uniform Crime Reports (UCR) consistently show that LGBTQs are the third most likely group targeted for hate-motivated crime in Canada (Morneau, 2020). Recent Canadian data collected via the General Social Survey (GSS) and the Uniform Crime Reporting (UCR) survey show that LGBTQs are much more likely to be victims of violent crime in comparison to their heterosexual counterparts (Conroy & Cotter, 2017).

A review of the extant research on anti-gay/lesbian violence reveals significant underreporting of violence incidents to both the police and community organizations (Roberts, 2005). This is due to a range of reasons, including lack of trust in the police, fear of being 'outed', and fear of further victimization by the police or homophobic or transphobic social service workers (Comstock, 1991). This makes it difficult to find accurate statistics on the prevalence of violence against our communities and reach survivors to provide support.

While police-reported hate crime data is documented annually through the UCR, and every five years through the GSS (Victimization cycle), none of these sources explore police as perpetrators of hate-motivated bias (Moreau, 2020). The U.S. National Coalition of Anti-Violence Programs (NCAVP) tracks incidents of verbal abuse and physical abuse by police (National Coalition of Anti-Violence Programs, 2018). While outreach has taken place through diversity training and police and community liaison committees, the research suggests that a certain degree of mistrust

still exists (MacDonald, 2003). To date, the best source of Canadian data has been collected by community-based organizations. While outdated, the data provided here give a baseline for further examination of police ideologies, practices. and institutional response to AGLV.

LITERATURE ON POLICING THE LGBTQ COMMUNITY

While law enforcement officials are responsible for protecting LGBTQs from hate-motivated crimes, some police view such crimes as pranks or an acceptable form of behaviour. Some are themselves perpetrators of anti-gay/lesbian violence. Canadian studies that report on police treatment of gay and lesbian persons have not painted a positive picture (Comstock 1991).

In early community-based studies in Canada conducted by the New Brunswick Coalition of Human Rights Reform (1991), Kelner (1983), and Smith (1991) asked participants to provide detailed information on police response. While a small number of New Brunswick participants had been physically assaulted by police (2%), participants were also subject to anti-gay discrimination or violence (23%). Also, their complaints were either not taken seriously or not followed through (15%), were detained unnecessarily (10%), called names by police (10%), and threatened with violence by police (2%) (New Brunswick Coalition of Human Rights Reform, 1990:1-2). Kelner (1983) found that in response to calls for assistance by victims of anti-gay/lesbian violence, the practice of on-duty police officers was frequently: (1) to refuse to intervene, either to protect the victims or to apprehend the perpetrators; (2) to minimize the seriousness of reported incidents, because the victims are lesbian or gay; (3) to blame the victims; and (4) to harass verbally and to physically abuse the victims.

A study conducted by the Nova Scotia Public Interest Group found that police had harassed 16.5% of participants, and 2% had been beaten or assaulted by police (Smith, 1991). More recently, the lack of police response to missing and murdered gay men has spiked renewed interest in the issue of police accountability to the LGBTQ community. Toronto serial killer Bruce McArthur successfully evaded police for several years; however, only when a white gay male (Andrew Kinsman) went missing did police investigate

further. In the end, eight men, many of whom were homeless and racialized, had died at his hands (Angeles, Roberts, 2019: 1).[1]

One might hope police attitudes and responses have changed with the subsequent development of hate crime units and education about hate crime over time. However, there is no empirical data that would allow us to assess whether there has been such a change. More research is needed on victims' experiences with police and law enforcement agencies. While these early studies may be a little dated, my survey data reveal that LGBTQs still perceive that police discriminate based on sexual orientation in Canada. Furthermore, U.S. research reveals that LBTQs continue to be subject to police misconduct (Mallory, Hasenbush, Sears, 2015).

RESEARCH FINDINGS FROM COMMUNITY-BASED STUDIES IN CANADA

Six Canadian victimization studies found that participants in each study experienced harassment and physical attacks by police or were subject to police misconduct (Smith, 1993; New Brunswick Coalition of Human Rights Reform, 1991; Faulkner, 2004; Faulkner, 2009; Samis, 1995). An averaging of subcategories across the studies (N=1,992) finds that 14 percent had been harassed by police or subject to police misconduct. Three percent had been beaten or assaulted by police. Over three-quarters of the sample (83.1%) knew of others who had been 'gay-bashed.' Three quarters (75%) of participants indicate being somewhat or greatly affected by the knowledge that others had been attacked, resulting in fear for their safety (21.5%), developing coping mechanisms (59.5%), and employing strategies of avoidance (12.2%). Most survey participants (52%) indicate not having reported to police out of fear over secondary victimization due to their sexual orientation and because they felt nothing could be done (18.2%) and feared for their safety (9.1%). These trends mirror those obtained in previous studies of anti-LGBTQ violence and victimization (Comstock, 1991).

THE SOLUTION TO UNDERREPORTING OF HATE-MOTIVATED CRIMES AGAINST MEMBERS OF THE LGBTQ

It is generally accepted that hate-motivated crimes are underreported (Roberts, 1995). The findings from the above studies prove the seriousness of the problem of underreporting. Clearly, gay and lesbian participants show high percentages of

fear of secondary victimization due to reporting to the police. Given the effort that has been put into sensitivity training of police on behalf of victim assistance programs (e.g., the 519 Church Street Community Centre's Community Response to Bashing Committee and the "Bashing Reporting Line" initiative in Toronto), it is discouraging that many Canadian survey participants echo the experiences reported in earlier studies. There is a need for more research on law enforcement response and training to determine the relationship between police attitudes toward LGBTQs and police response to complaints (Faulkner, 2001).

Because the early Canadian questionnaires asked about the most recent anti-LGBTQ violence incident, and these may have been incidents that happened in the past, we do not know if they accurately describe current crime reporting patterns. During the past decade, many police departments in Canada have taken measures to respond to the problem of hate crimes, often with assistance from provincial and federal government agencies (Kirkup, 2013; Toronto Police Services, n.d.). Police officials are increasingly working with minority communities to improve the response to hate crimes; however, strained relations between Liaison Committees and the LGBTQ community jeopardize the work that has been done (MacDonald, 2003). Undoubtedly, police personnel in many provinces still need more explicit policies and better training for dealing effectively with hate crimes based on sexual orientation. However, to the extent that nonreporting persists, effective remedies must come from LGBTQ communities and the police. Outreach to gay men, lesbians, bisexuals, and transgender persons is necessary to overcome such long-standing suspicions of the police. Such efforts will have to originate not only in criminal justice agencies but also in community organizations.[2]

For example, in 2007, in conjunction with the Toronto Police Service, the national organization Egale Canada[3] helped to create the Report Homophobic Violence Period (RHVP) Program (Kirkup, 2013). RHVP is a public awareness campaign aimed at young people (ages 13 to 25), and an Education Program that addresses homophobia and bullying and violence. The program provides information about police hate crime units, LGBTQ police community liaison

personnel, and victim assistance programs across Canada. In response to criticisms of the previous lack of police response, this initiative in Toronto attempts to raise public awareness and enhance police accountability.

CONCLUSION AND FUTURE INITIATIVES

During a weekend discussion of Egale community partners in 2005, recommendations were made to respond to concerns about police harassment, abuse, and inaction (Egale, 2005). Although the research conducted in Canada is not representative of the whole LGBTQ population, the trends determined so far suggest distinct patterns of victimization emerging across regions. Even though the experience of lifetime victimization is relatively high, ranging from verbal assault and physical assault to harassment, the reporting rates to police and social service agencies are relatively low. This evidences a need for hate crime incidents to be tracked and examined for changes in police response over time. Thus, a more formalized data collection process needs to be developed to document victimization incidents and help raise awareness of the seriousness of the crime.

There is a need to develop an education module to sensitize police to the issues facing our communities around anti-LGBTQ violence to increase police capacity and, hence, LGBTQ access to justice. Education of police services could proceed through the development of an education module offering a coordinated strategy for engaging police services across Canada in a dialogue about the lack of police response. The issue of under-reporting and lack of trust of police could potentially be addressed by creating a national Web site and/or through a network of helplines for victims.

There is a dire need to develop a coordinated strategy for police services on this issue, and communities need to have the chance to share experiences and perspectives about police relations and how police might better deal with violence against diverse communities. To improve relations with the police, the involvement of all police services must be assured, including the RCMP, provincial forces, and local forces, to influence and encourage LGBTQ sensitivity training and promote its availability across the board. Thus, the objective is to engage police services across Canada in a

dialogue on the issues around and police responses to anti-LGBTQ violence with the ultimate aim of increased police responsiveness and trust in police. Given the current COVID situation and the recent cry from some 'defunding police' sectors, such initiatives are needed more than ever. ■

NOTES

1. On October 17, 2020 CTV's W-5 show did a special on the McArthur case and one of the survivors (Haines, 2020) – see also Lambda Legal, (n.d.).
2. Criminal justice agencies such as the RCMP, and municipal, provincial and territorial police need to work with LGBTQ community organizations in alliance with other groups fighting hate.
3. Egale Canada is a national advocacy organization founded in 1986 that promotes equality for the LGBTQ community, backs up this data.

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RÉSUMÉ

Policing of LGBTQ Communities in Canada

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Même si, selon Mme Faulkner, les membres de la communauté LGBTQ forment le troisième groupe le plus susceptible d'être visé par des crimes haineux au Canada, ils se heurtent à des obstacles considérables lorsqu'il s'agit d'interagir avec des agents de la police. Par conséquent, ils ont tendance à ne pas déclarer tous les crimes haineux dont ils sont victimes, non seulement à la police, mais aussi aux organisations communautaires, par crainte de réactions homophobes. Dans cette optique, Mme Faulkner souligne que les questions entourant les crimes haineux perpétrés contre les LGBTQ ont une grande portée et sont intrinsèquement liées à la justice sociale. Selon l'auteure, le risque de victimisation secondaire associé au signalement des crimes haineux indique qu'il faut explorer la police comme auteurs de préjugés motivés par la haine au Canada. Toujours non résolue aux États-Unis, cette question est pourtant bien documentée. Entre autres recommandations, l'auteure note la nécessité de développer un module de formation visant à sensibiliser les policiers aux problèmes de violence auxquels la communauté LGBTQ est confrontée, afin d'accroître leur capacité à traiter les membres de cette communauté de manière appropriée, ce qui permettrait d'améliorer l'accès des LGBTQ à la justice.

The European Approach to Combating and Preventing Online Hate Speech

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Everyone in the virtual world is a potential victim of hate speech, but ethnicity, religion, and LGBTQ status are considered the three primary markers for targets for the EU. With online hate on the rise, the EU has focused on practical prevention, awareness-raising, the involvement of social media platforms, and various new laws to help reverse this trend. The Council Framework Decision was the first concrete step taken by the EU to develop a unified plan across the member states, but there have been problems with compliance. Some member states have made amendments to national criminal codes. Still, disparities in the definitions of offences have proved problematic, and criminal law aims primarily at the most severe hate crime cases. The second step was creating a Code of Conduct involving the owners of social media platforms and aimed at reducing hate speech and carrying out cyclical data collections. Starting with Germany, a few countries have since made it mandatory – punishable by stiff fines – for social media platforms to establish a successful user-reporting system and share reports on their handling of unlawful content in periodic intervals.

ONLINE HATE SPEECH - NOT A MERE BAGATELLE, BUT A CRIME

Becoming a target on the Internet may happen unexpectedly to even the most vigilant of us. Nobody in the virtual world is safe from becoming a victim of hate; individuals, legal persons and legal entities frequently experience degrading online treatment, especially hate speech. These so-called "shitstorms" are very prominent (see Baldauf, Edner, & Guhl, 2019).

While the primary victim of online hate differs between member states in the European Union, the main targets are ethnicity, religion (e.g., Jews, Roma, and people associated with Islam (Bakalis, 2015), and members of the LGBTQ+ community.

Online 'hate' statements exceed both the limits of freedom of speech and those of the legal system. Furthermore, as has been well documented, the consequences can have a profound impact on the victim. Hate speech dominates online "communication" and has become a critical hate crime and, therefore, focuses on legislation and practical measures in Europe (Baldauf et al., 2019).

As several European studies have confirmed (Burnap & Williams, 2016), hate on the Internet is on the rise and barriers to committing a criminal offence on the Internet are fading. Following trigger events, online hate spikes within the first 24-48 hours (Williams & de Reya, 2016, p. 8). Hate speech offenders tend to race to the keyboard and seek an outlet on social media. Most of them think their hateful comments are simple expressions of opinion (Gagliardone, Gal, Alves, & Martinez, 2015) or assume they are acting anonymously in some "legal vacuum" where there are no (criminal) consequences. Yet, they usually know that they exceed (legal) accepted limits, or as the Austrian Minister of Justice Zadić asserted appropriately in an interview concerning hate on the Internet,

"everyone grasps what is too much and what is not" (Youssef & Sulzbacher, 2020).

Hence, the European Union focus on hate crimes in cyberspace has increasingly favoured practical prevention and awareness-raising measures using (inter)national agencies and organizations. Such measures supplement and extend the existing European strategy on hate speech and contribute to (binding) legal documents and recommendations by the European Union that are applicable for all Member States. However, also the Member States have taken independent measures on combating hate crimes in cyberspace. All combined, these form a comprehensive "package" of legal and practical steps to combat, prevent and punish hate speech.

A milestone in the fight against hate speech for Europe was the Framework Decision on Combating Racism and Xenophobia (Council Framework Decision, 2008), 913/JHA), which decreed that violence or hatred is "based on race, colour, religion, descent or national or ethnic origin" (with the purpose or effect of violating the dignity of a person all Member States must constitute an offense). So defined, hate speech is not a mere bagatelle, but a criminal offence and this is equally true when it occurs online.

PREVENTION AND COMBATING BY CRIMINAL LAW

The Council's Framework Decision became the steppingstone for a unified EU approach to combating hate crime through criminal law. Therefore, the Framework Decision process aims to regulate the most severe criminal legal issues by defining the desired results and allowing member states to determine the best way to proceed.

Focal points of the Framework include the criminalization of hate speech, its instigation, as well as aiding and abetting. Member States were also required to ensure that racial and xenophobic motivation for other offences (e.g., online stalking) would be considered an aggravating circumstance in their Criminal Code or incumbent on the courts to consider such explanation in the determination of penalties. According to the Framework, perpetrators and legal entities should be punishable under national law for hate crime. Another important point is – especially from the victims' perspective – that the investigation into

and prosecution of hateful conduct shall not be dependent on a report or an accusation by a victim. Hence, national authorities are obliged to investigate if hateful conduct was committed independently.

Member States were obliged to implement the Framework's provisions into national law by 2010, but a report several years later indicated that several EU countries[1] had not yet fully complied (Report of Commission Parliament, Commission and Council on Framework, 2014). But, the European Court of Justice does have jurisdiction to resolve differences between Member States.

Even though twelve years have passed since adopting the Framework Decision, not all Member States have accurately implemented the criminal code legislation. Additionally, not all Member States have enough of the requisite practical measures to be effective (e.g., victim support services, hate crime recording, and encouragement of reporting hate crimes). Furthermore, Member States cannot be held accountable for any aspects of the framework which they have not transposed into their domestic law.

THE EU IDEA OF A CODE OF CONDUCT INVOLVING IT ORGANISATIONS AND PLATFORMS IN PREVENTING AND COMBATING CERTAIN FORMS OF RACISM AND XENOPHOBIA

When it comes to the different approaches to researching and combating hate speech on a national and supranational level in the EU, one of the primary ways involves data use. Although each country's records are vital, unfortunately, there is a lack of data on online hate crimes, and there is no unified approach to its collection (see, for example, FRA Report, 2018, pp. 28). Fundamental problems include differences in the definitions of offences in member states' relevant legal instruments, and the willingness and capacity to report such crimes vary between the EU countries. In some Member States, the victims do not trust the authorities enough to report such crimes. Furthermore, in some Member States, victims are unaware of available (victim) support organizations, which may assist in reporting, protecting against repeat victimization, or offering psychological support (FRA, 2016).

To address this problem, the European Commission worked with leading social media platforms to

develop a unified data-gathering approach based on a code of conduct regarding online hate speech (European Commission & IT Companies, 2016). The Code refers to the definition given by the Framework Decision of 2012 (EU, Code of Conduct, 2016).

The Conduct Code is predicated on close cooperation between the EU, the most popular social media platforms (e.g., Facebook; Microsoft; YouTube; and Twitter), civil society organizations, and a host of national authorities. These stakeholders meet regularly to discuss challenges and progress. Subsequently, monitoring cycles for hateful conduct on social media platforms were launched. In the meantime, Instagram, Google+, Snapchat, Dailymotion and Jeuxvideo.com joined the Code, meaning that 96% of the EU market online platforms are involved in the process.

For the Code of Conduct, the EU and its key players agreed on commitments such as placing an effective review process on online hate speech focusing on the most valid complaints about removing illegal hate speech received. The Code also provides guidelines on educating and raising awareness of users, including programs to encourage critical and reflective thinking about what constitutes online hate speech. IT companies are expected to provide regular training to their staff to understand about hate crime and detect possible offences. Additionally, the platforms are encouraged to share their best practices. However, the Code, in its current iteration, is a voluntary agreement and therefore not enforceable.

The framework decision mentioned above is the foundation of the Code of Conduct as IT companies base their removal of content on the national laws transposing the Framework Decision. However, not all removed content must be criminal. Content is removed if it incites violence or hatred directed against a group of persons or a group member and is based on the grounds of discrimination given in the Framework Decision. IT companies are not required to report to police the cases submitted during the monitoring cycles.

FIRST SUCCESSES
During the first monitoring cycle of the Code of Conduct in 2016, 12 organizations located in 9 of the 27 Member States supported the Code. Offending content constituting illegal hate speech

was removed in 169 (28.2%) cases. Only 40% of cases were reviewed by IT companies, and the task was completed in less than 24-hours (European Commission, 2016, p.4). After this initial monitoring cycle, the Code has shown promising results with a yearly increase in reported cases. There has also been efficiency in report handling. As of 2020, 39 organizations from 23 Member States and the United Kingdom had sent notifications relating to hate speech deemed illegal by the organizations to IT companies, which had to assess the content's legality based on the Code of Conduct. In total, 4364 notifications have been received through the monitoring cycles with an assessment of 90,4% of the cases within 24 hours and 71% of content removed. Additionally, 475 cases of hate speech have been submitted to the police, public prosecutor's bodies, or other nationalities by the IT companies (European Commission, 2020).

GERMANY'S LEGAL EFFORTS TO REMOVE HATE SPEECH AND TRACK DOWN THE OFFENDERS
In Germany, social media platforms are more involved in fighting hate crimes in cyberspace using enforceable laws. The German Parliament passed the "*Netzwerkdurchführungsgesetz – NetzG*" in 2017, a law that obliges sizeable social media platforms to delete any hateful content defined in the German Criminal Code. After a user complaint, comments must be analyzed immediately by the company owning the social media platform. If unlawful wording is found, the text must be removed within 24-hours. In other cases, they have 7-days to check the facts, if necessary, with a recognized institution's support. Platforms must thus provide users with an easily recognizable and accessible method for submitting complaints about illegal speech.

Additionally, social media platforms are required to share reports on their handling of unlawful content in periodic intervals[2]. Consider a platform fails to establish a reporting system or does not have an effective one. In that case, the NetzG stipulates severe financial fines for the person in charge of the reporting system (€ 5 Million) and the social media platform (€ 50 Million).

In February of 2020, Germany released a draft law to combat hate crimes more effectively. The law focuses on crimes on the Internet. It provides additional obligations for social media platforms

to report any illegal content emerging on their platform to the German Federal Office of Criminal Investigation. The law was supposed to come into force by the 1st of January 2021. However, it was stopped because it was deemed unconstitutional. While plans to revise the draft exist, it is uncertain when the law might come into force.

While Germany was the first European country to establish such an approach to combating hate on the Internet, France announced a similar law (Loi Avia) in May of 2020, and Austria drafted a similar legal framework (*Kommunikationsplattformen-Gesetz – KoPl-G*) in September 2020. Together, however, these drafts and laws have drawn considerable criticism, most of which focus on freedom of speech.

CONCLUSION

As in virtually every corner of the world, hate speech/crime has also garnered considerable attention in recent years. Fortunately, the European Union reacted quickly to combat and prevent this phenomenon with a comprehensive legal and practical approach.

The main points of the Framework are:

- EU binding legislation to establish liability in national criminal codes,

- cooperation of the major social media platforms to gather data and develop a system for removal of hateful content, and

- practical measures such as awareness training to the users in the virtual world, the offenders, and victims.

Despite the intentions of the Framework, much more needs to be done at the national level because only a unified approach can lead to real success. The EU is currently focusing on following a standard definition of criminal hate speech with a comparable data registration protocol in all Member States to generate a better understanding about hate crime, offenders, and victims to the end of adopting practical prevention measures. Furthermore, the Code of Conduct mechanisms should be implemented within a new – already planned –EU legal framework that is binding and enforceable for all Member States, and more attention must be given to the support of hate crime victims.

Overall, it is imperative to balance the line between the criminalization of hate crime perpetrated through speech and the right to freedom of speech. Legislators will need to consider the approach carefully as neither limiting freedom of speech nor giving hate a 'free pass' will be without consequence.

Since the Canadian Standing Committee on Justice and Human Rights has reported a need to define and track online hate, introduce ways to educate people, and develop intervention mechanisms (SCoJaHR, 2019: 39), it may be useful to look at how Europe has been addressing and attempting to surmount obstacles that have arisen concerning these issues. Even though the European Framework Decision program could still benefit from several refinements, its model and objectives could serve as a template for how Canada moves forward in addressing the growing prevalence of online hate speech and or discourse ■

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RÉSUMÉ

European Approach to Preventing and Combating Online Hate Speech

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Dans le monde virtuel, chaque individu est une victime potentielle de propos haineux, mais l'origine ethnique, la religion et l'appartenance à la communauté LGBTQ sont les trois principaux marqueurs pouvant être visés par ces crimes au sein de l'Union européenne (UE). Face à la montée de la haine en ligne, l'UE a mis l'accent sur la prévention concrète, la sensibilisation, la mise à contribution des plateformes de médias sociaux et une série de nouvelles lois pour tenter d'inverser cette tendance. La décision-cadre du Conseil est la première mesure concrète prise par l'UE en vue d'élaborer un plan unifié dans tous les États membres, mais des problèmes de conformité se sont posés. Certains États membres ont apporté des modifications à leur code pénal national. Cependant, les disparités dans les définitions des infractions se sont révélées problématiques, et le droit pénal vise principalement les cas de crimes haineux les plus graves. La deuxième étape a consisté à créer un code de conduite impliquant les propriétaires de plateformes de médias sociaux, et visant à réduire les propos haineux et à recueillir des données de manière cyclique. En commençant par l'Allemagne, quelques pays ont depuis imposé aux plateformes de médias sociaux l'obligation – sanctionnée par des amendes sévères – de mettre en place un système efficace de signalement des utilisateurs et de diffuser périodiquement des rapports sur leur gestion des contenus illicites.

Anti-Muslim Hate Crimes in Canada: Racism, Gendered Violence, and Misogyny

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This article, based on the authors' work supported by a Social Sciences and Humanities Research Council of Canada Insight Program research grant, briefly outlines the main issues concerning gendered racism and misogyny that emerged from 51 semi-structured interviews conducted by the authors. The resulting testimonials evidence recognition of the existence of latent Islamophobia issues being kept alive in Canada. Mercier-Dalphond and Helly point out that institutional factors to systemic racism concerning hate crime violence against Muslims are manifest when the state or judicial processes do not punish violent acts; related problems include victims not receiving proper police attention when seeking justice and a reluctance among security forces and politicians to consider such violent Islamophobia as hate crime. Since the subject of Canadian white supremacist groups, which are described in this article as posing a real threat in terms of hate crime violence, is beyond the scope of this article, the authors focus mainly on the rich terrain of the gendered, racist nature of anti-Muslim hate crimes in Canada.

INTRODUCTION[1]

Hate crimes and violence targeting Muslims in Canada are historical phenomena, as well as present-day tragedies. One such tragedy made headlines recently after the Quebec City mosque shooting took six Muslims' lives in 2017. However, little research has addressed the various aggressions or complexities Muslim Canadians face in reporting such acts[2]. With a team of researchers across five major Canadian cities, our qualitative study has made possible a study on the manifestations and impacts of hate crimes against Muslims[3]. This short article will briefly outline the main issues concerning gendered racism and misogyny that emerged from the 51 semi-structured interviews we conducted in English or French between April and November 2019[4].

HATE CRIMES AGAINST MUSLIMS: INSTITUTIONAL FACTORS IN SYSTEMIC RACISM[5]

Recent violent crimes, most notably the Quebec City mosque shooting in January 2017, testify to the seriousness of hate crimes against Muslims in Canada. This tragedy brought to light the existing, latent Islamophobia issues and demonstrated the prevalence of right-wing white supremacist groups that preach hateful, Islamophobic messages and actions. More recently, on September 12th, 2020, a Muslim man of South Asian origin was killed while monitoring security health checks for COVID-19 in front of his community's mosque in Etobicoke (Toronto) by a white man affiliated with neo-Nazi white supremacist groups online. Another Toronto mosque had to close after receiving hateful and violent messages on October 12th, 2020 threatening to reproduce two Christchurch mosque shootings. Such events reveal the gravity of anti-Muslim hate crimes, the threat that white supremacist

groups represent in Canada, and how violence is perpetrated according to victim gender. While research on the prevalence of Canadian white supremacist groups is beyond this short article's scope, in the following pages, we will focus on the gendered, racist nature of anti-Muslim hate crimes in Canada.

Hate crime violence is enacted against an identified group or identity, based on distinctions such as colour, race, religion, national or ethnic origin, age, gender, sexual orientation, gender expression, and mental or physical disability. Hate crimes are, in turn, facilitated by institutional factors when violent acts are not punished by the state or judicial processes (Jackman, 2002). Official responses have been particularly concerning in some cases of anti-Muslim hate crimes in Canada. On the one hand, victims often report not receiving proper police attention when seeking justice. On the other hand, security forces and politicians are often reluctant to consider such violent Islamophobia as hate crimes. This reluctance was particularly salient in the Quebec City mosque shooting, after which the Quebec provincial government denied any form of Islamophobia in the province. Subsequently, legal processes fail to identify strategies that could tackle such violence. The interviews we conducted further testified to such institutional factors facilitating the perpetuation of anti-Muslim hate crimes and heightening feelings of insecurity among Muslim Canadians.

GENDERED ISLAMOPHOBIA & MISOGYNY: HOSTILE MEN AND VULNERABLE WOMEN

Muslim men have tended to be the primary recipients of direct violence and deadly attacks suffered by Muslims. Conversely, more daily hateful attacks tend to be carried out against Muslim women, notably more visible hijabi women. This conclusion corresponds to the author's findings. Based on Sherene Razack's work, gendered Islamophobia has been constructed and established within white settler states like Canada as the line between secular/modern and religious/pre-modern citizens (2007: 148). Within this mythical frame of analysis, Muslim men are supposed to be violent and threatening, upholding religious and barbaric customs imposed on Muslim women.

Conversely, Muslim women are portrayed as victims of their religion and patriarchal male partners, forever "imperilled" and in need of being saved by

the "civilized" European (white) citizens (Razack, 2007: 146). Since being secular is the defining feature of modernity in a white settler state, women who wear hijabs are seen by white secular (read civilized) citizens as a clear affront to the state. In this view, they are pledging their primary allegiance towards religious, and more specifically Islamic, values instead of Canadian society and its supposedly secular values.

We can arguably conclude that negative social responses to the Quebec City mosque shooting and other anti-Muslim hate crimes are grounded in the latent belief that Muslim men are inherently dangerous, backwards, brutal, and pose a threat. The male Muslim bodies are already inscribed in such violence. In this frame of analysis, Muslim women, as the wives of hostile Muslim men, are vulnerable and must be saved from their kin and faith. Thus, removing the hijab from public spaces has become a symbol of female emancipation for so-called secular modern citizens. Framed differently, hijabi women become the target of Islamophobic (anti-Muslim racist) misogyny, for they are "deserving" of being punished if they persist in choosing to wear the hijab, siding with Muslim patriarchy[6].

Our interviews recorded numerous manifestations of such gendered, racist violence in hijabi women's testimonies who described overt attacks targeting their hijab and or hyper-sexualizing their bodies. Women across the five cities testified to this feeling with only minor differences, describing being followed and or chased, verbally harassed and or sexually assaulted, threatened with violence, and having objects thrown at them. In some cases, they were spat on or attacked by people attempting to rip their hijab off. In Vancouver's SkyTrain network specifically, many hijabi women were sexually assaulted or harassed by white men. Interviewees reported recurring comments about their bodies and their hijab as depriving them of beauty, or other sexual comments such as "*I bet you're not getting any*" to a young man walking with a hijabi young woman. Other examples include when a man touched himself in front of a hijabi woman and when another man harassed a girl by asking her sexually inappropriate questions.

Overall, the threat of victimization and everyday micro-aggressions, such as "nasty looks"

and assumptions that hijabi women are less intellectually capable, have made respondents feel "othered". For instance, a woman who has lived in Vancouver for the past 20-years expressed that "*I never feel like I am Canadian – because of the snide comments, dirty looks – a constant affirmation that no matter what you do, there will always be prejudice against you*". Women students have, in turn, suggested that their class interventions are always mediated by the opinion that people have of their religion, race, and attire, which leads to a perception of them as intellectually less capable than their classmates.

Another aspect of gendered hate crime was seen through everyday vulnerabilities caused by lower economic backgrounds and social status within Muslim and or ethnic circles. Notably, we found that young male respondents in Toronto, who come from a lower economic background, have been victims of verbal harassment and threats of violence during their employment. The young males were typically employed in lower economic status jobs (e.g., gas station attendant, convenience store worker, security guard, etc.). They were harassed by the same customers but felt they could not report these harassments to authorities to avoid a confrontation that could harm their families and or their legal status. As recent immigrants or refugees of precarious socio-economic and legal status, they often found themselves placed in vulnerable situations. This precarious institutional status prevented them from denouncing their aggressors to avoid losing customers and seeking justice out of fear of getting involved in the judicial system. One Toronto male resident stated that no recourse was available to him because "*he* [the customer] *also knows I can't even really do anything. My family knows our hands are tied*".

As such, our interviews with Muslim Canadians regarding their experiences of anti-Muslim hate crimes shed light not only on the racist and gendered nature of this type of violence, the different levels of vulnerability, and the everydayness of violence but also on the difficulty of responding to these crimes and seeking justice. As emphasized by many respondents, anti-Muslim hate crimes point to the question of access to justice for victims. Laws must be designed that allow more exact and more straightforward access to justice.

STATE RESPONSES TO HATE CRIMES

In addition to hate crimes themselves, the state and broader social responses to this violence have caused Muslim Canadians to feel a loss of belonging. There is simultaneously an enduring vision of Muslim Canadians as racially and religiously other, as well as a refusal to label the violence they have suffered as anti-Muslim and hateful. The denial of Islamophobia, particularly following the Quebec City mosque shooting, was shocking to many of our respondents.

Because of this victimization and its threat, some respondents resolved to alter their daily routines (through private transportation, work locations, safer living accommodations) or ensure added security (such as personal alarms for hijabi women) when commuting. Overall, the threat of victimization and broader social responses to such violence have caused many respondents to feel less Canadian or not Canadian at all. Furthermore, for those who were not directly attacked, the knowledge of group victimization triggered a loss of belonging and an increased feeling of ostracization.

Respondents across the five cities mentioned the absence of police engagement in preventing and handling anti-Muslim violence. Police officers were often reluctant to document crimes as hateful, anti-Muslim violence, instead of perceiving these acts as isolated cases. Many respondents emphasized the central role of security forces, including the police and the RCMP, in reinforcing Muslims' victimization. As many interviewees described, the general lack of trust they hold in the system and officers' good faith, reconciliation and educational work is required in this field. Security forces need to be engaged and educated about this type of violence to be at the forefront of prevention and support victims in the legal process. In addition to the necessity of building bridges of trust and support between security forces and Muslim communities, respondents stressed the need to implement more accessible mechanisms to help victims come forward and register complaints. At present, the processes are long, painful, and lack any psychological or emotional support.

CONCLUSION

In conclusion, from our interviewees' testimonies and recent media reports of anti-Muslim crimes, we urge governmental bodies and security agencies

to recognize, first and foremost, the existence of Islamophobia. Within the Canadian context, we have seen different themes emerge, notably the gendered, racist nature of violent acts and crimes towards Muslims. The violence suffered by Muslim men and women tends to be mediated by myths positing the former as inherently violent and the latter as perpetually victimized and responsible for their victimization by choosing to continue wearing their hijab. The underlying misogyny towards Muslim women is apparent when they are punished for wearing the hijab, either through threats, direct assaults, sexually undesirable comments, or disregard for their opinion and intelligence in classroom settings. These multi-layered forms of victimization have ripple effects within the immediate nuclear family, the person's network of communities, circles of friends, and may do so for generations to come. ■

NOTES

2. The six men murdered on January 29th, 2017, at the Islamic Cultural Centre in Sainte-Foy (Quebec City), were Ibrahima Barry (aged 39), Mamadou Tanou Barry (aged 42), Khaled Belkacemi (aged 60), Aboubaker Thabti (aged 44), Abdelkrim Hassane (aged 41), and Azzedine Soufiane (aged 57). Nineteen other worshippers were injured.

3. Respondents were residing in Edmonton (n=12), Montreal (n=8)/ Quebec City (n=4), Toronto (n=15) and Vancouver (n=12). We coded their transcripts for the emerging themes across cities. Each city had a principal investigator conducting interviews (Denise Helly, Montreal; Barbara Perry, Toronto; Parin Dossa, Vancouver; Irfan Chaudry, Edmonton) in partnership with their research assistants (Geneviève Mercier-Dalphond, Montreal; Fatih Karakus, Toronto; Simran Ahmed, Vancouver). The interviews were conducted face-to-face or by phone, depending on the preference of respondents.

4. For more in-depth information on our research results, see "Anti-Muslim Violence, Hate Crime, and Victimisation in Canada: A Study of Five Canadian Cities" in the *Journal of Canadian Ethnic Studies* (forthcoming), by the same authors.

5. In this article, we use anti-Muslim racism and Islamophobia interchangeably.

6. For more information on Islamophobia as racism, see Alia Al-Saji's "The Racialization of Muslim veils: A Philosophical Analysis" (2010).

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RÉSUMÉ

Anti-Muslim Hate Crimes in Canada: Racism, Gendered Violence, and Misogyny

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Cet article, basé sur le travail des auteures réalisé grâce à une bourse de recherche du Conseil de recherches en sciences humaines du Canada dans le cadre du programme Savoir, expose brièvement les principaux enjeux entourant le racisme sexiste et la misogynie, qui ont émergé lors de 51 entretiens semi-structurés menés par les auteures. Les témoignages qui en résultent attestent de l'existence de problèmes latents d'islamophobie au Canada. Mme Mercier-Dalphond et Mme Helly soulignent que les facteurs institutionnels du racisme systémique à l'origine des crimes haineux perpétrés contre les musulmans se manifestent lorsque l'État ou les procédures judiciaires ne punissent pas les actes violents. Au nombre des problèmes qui en découlent figure le fait que les victimes ne reçoivent pas une attention policière appropriée lorsqu'elles cherchent à obtenir justice. De plus, les forces de l'ordre et les politiciens semblent réticents à considérer la violence islamophobe comme un crime haineux. Puisque les groupes canadiens militant pour la suprématie blanche, présentés ici comme une menace réelle en ce qui a trait aux crimes haineux violents, dépassent la portée de cet article, les auteures se sont concentrées principalement sur la nature raciste et sexiste des crimes haineux dirigés contre les musulmans au Canada.

Hate Crimes
- An Indian Perspective

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Reporting that the citizens of India identify as Indians regardless of religion, caste, class, etc., Dr. Dube notes that prejudices during periods of socio-political fervour have led to clashes, mainly related to religious lines and caste, now termed 'hate crimes'. Dr. Dube explores the historical genesis of hate crimes in India and focuses on the present-day escalation of hate crimes in contemporary India, especially between Muslims and Hindus, a phenomenon Dr. Dube calls countering hate with hate. Describing how hate crimes propagate seeds of intolerance, thus engendering violence and stifling social cohesiveness and unity, Dr. Dube concludes that the State is responsible for enacting/enforcing effective laws, collecting/disseminating data on hate crimes, and taking preventive steps. In this vein, she warns that "The present political regime also must back its rhetoric with fast action to counter this ongoing dangerous trend before it results in a magnitude of disaffection that compels such violence, which could enkindle terrorism".

INTRODUCTION

India is a country known for a diversity that ranges from its natural environments and resources to its people of diverse castes, cultures, religions, languages, etc. (Kaul, 2015). Historically, there have been periods of serenity and cooperation amongst its people. Even today, if one asks a person about their identity, they will reply in terms of being an Indian, rather than being a member of any particular religion, caste, class, etc. However, it would be remiss not to acknowledge that in moments of heightened social/political tensions, prejudices have led to clashes amongst different groups, mostly across religious lines and caste, now termed 'hate crimes'.

Until recently, this terminology was not in vogue in legal discourse. Since around 2014, under the pro-Hindu nationalist government of Sri Narendra Modi, the concept of hate crime has gained acceptance and recognition concerning the growing number of incidents involving religious-based violence throughout the country (Schultz et al., 2019). This 'new' trend of violence has prompted new legal measures to uphold the democratic, secular fabric of the Constitution, which guarantees life, liberty, and equality to all irrespective of caste, creed, race, religion, or gender.

HISTORICAL GENESIS OF HATE CRIMES

Hate crimes are defined as any felony or violent crime based on prejudice against any specific group. It is often the racial, ethnic, religious, gender, sexual orientation, and other biases that form the category of victims who are targets of hate crimes (Jacobs and Henry, 1996).

According to the 2011 Indian census data, the Hindu-Muslim divide's genesis is mostly seen in the historical context. Hindus constitute 79.8% of the population, followed by Muslims (14.2%), and the remaining are shared by diverse religious groups. Scholars maintain that "the division between Hindus and Muslims in South Asia is nobody's fault or plot, really, but a natural consequence of the emergence of mass political culture…" (Pillalamarri, 2019, para 8). Long before the British conquered India, the Hindus resented their Muslim masters (i.e., the Turks, Afghans, & the Mughals). Many scholars opine that British colonialism's negative legacies,

such as introducing separate Hindu and Muslim electorates, aggravated religious conflicts between these two groups (see Verghese, 2018).

The present-day escalation of hate crimes is attributed to Rashtriya Swayamsevak Sangh (RSS)[1] backed the National Democratic Alliance (NDA), regaining power for the second time. The party is founded mainly on Hindutva (Hindu-ness), a hardline Hindu ideology premised on the notion that India is culturally a Hindu nation (Sharma, 2002). For instance, several legal and policy decisions ban the purchase and sale of cattle, abolition of the practice of triple talaq (instant divorce), the enactment of the Citizenship (Amendment) Act (CAA), 2019, and the revocation of Art 370 of the Constitution which conferred special status on Kashmir. These measures have triggered an upsurge in attacks based on religious affiliation. The Indian author and human rights activist Harsh Mander observed: "there seems to be a permissive environment for people to engage in hate speech and act out on hate. This plays out in terms of lynching, individual hate attacks, attacks on places of worship…" (Saldanah, 2020, para. 5).

HATE CRIMES IN CONTEMPORARY INDIA

Various Indian-focused hate crime studies have shown that the incident rate has increased over the past five years (see Kumar, 2019). The highest number of hate crime incidents occurred in 2017 (i.e., 11 deaths and 37 events related to cows that are considered as a sacred symbol of life in Hinduism, while, for Muslims, cow meat constitutes part of their diet) (Saldanah, 2020; also see Figure 1 which shows a steady increase in hate crime incidents since 2012).

FIGURE 1.
No. of hate crimes reported

SOURCE: Statista.
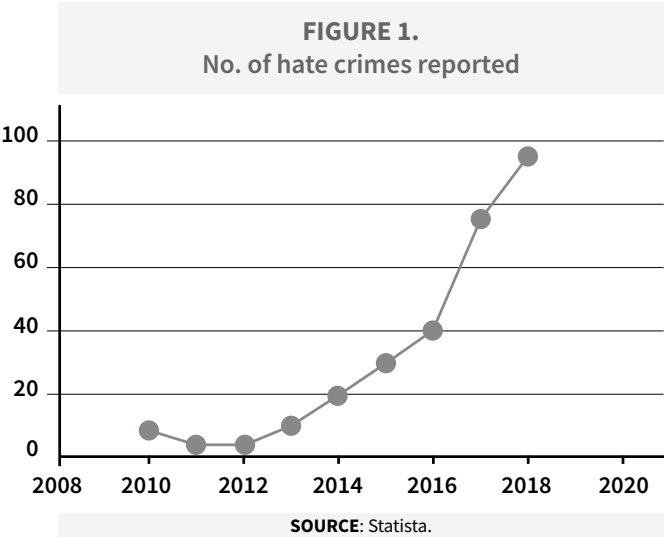
While there is no official data on hate crime incidents, the media regularly publishes high-profile cases, especially those involving killing cows. For example, the discourse gained attention with the lynching of Muhammad Akhlaq on September 28, 2015, at Dadri, Uttar Pradesh. Mr. Akhlaq and his son, Danish, were dragged out of their house at night and brutally thrashed by a mob following an announcement that the family had consumed and stored beef (Muhammed, 2020). On June 22, 2019, a young Muslim man was lynched because he refused to chant 'Jai Shri Ram' and 'Jai Hanuman' (Glory to Lord Ram and Lord Hanuman) by a mob forcing him to chant. Two separate incidents came to light within a week of the attack, where a Muslim teacher and cabdriver were beaten and pushed out of a train on similar grounds (Ayub, 2019).

In the meanwhile, Muslims claimed that the Citizenship Amendment Act (CAA) 2019 discriminates against them. The CAA proposes to fast track citizenship to undocumented migrants of "Hindu, Sikh, Buddhist, Jain or Christian communities" from neighbouring countries (i.e., Pakistan, Bangladesh, & Afghanistan). Most undocumented migrants were forced to seek shelter in India due to religious persecution in those countries (Anon, 2019). Clashes between Hindu mobs and Muslim anti-CAA protesters left at least 46 people dead and hundreds injured. Several properties, including schools, businesses, and places of worship were torched, but as Saldanah (2020) observed, the numbers presented are but the tip of the 'iceberg'.

COUNTERING HATE WITH HATE

History is replete with references to Hindus' persecution by their Muslim invaders (see Doniger, 2006; Gargan, 1992). Even in contemporary India, the 90s Kashmiri Hindu genocide, the 2013 Muzaffarnagar riots and the recent Delhi riots, 2020 (Jain and Ahmed, 2020) are reminiscent of widening animosity based on religion. Several incidents of hate crimes have been reported against Hindus for the last five years. In May last year, a Muslim mob attacked the owners of a Hindu lassi shop at Mathura, addressing them as '*Kaffirs*'(infidels). One person died in that violence. Again, Muslim mobs attacked an RSS shakha in Rajasthan and brutally thrashed the children present (Bhattacharjee, 2019). Sadhus (saints or Hindu holy men) have been

the latest targets of Uttar Pradesh and Maharashtra (Panigrahi, 2020).

STATE RESPONSE TOWARDS HATE CRIMES

In a rights-based approach to Constitutional legitimacy, the right to life and liberty is considered paramount. As a result, the State has the responsibility to "foster a secular, pluralistic and multi-culturalistic social order to allow free play of ideas and beliefs and coexistence of mutually contradictory perspectives" (*Tehseen S. Poonawalla v. Union of India*, 2018, para. 23). Nevertheless, based on the evidence presented, the State is failing to fulfil its Constitutional obligation.

The penal law of the land (Indian Penal Code, 1860) conceives various offences that promote hatred or bias within different groups on the grounds of religion, race, residence, language etc. However, these provisions have rarely been put to use, except for political mileage. In cases where the conditions have been invoked, the outcomes have been unsatisfactory. As some senior advocates of the Supreme Court opine, existing provisions such as common intention, shared object, abetment, and incitement of offence are enough to cover instances of hate crimes. However, others differ since the provisions are too general, difficult to establish in courts of law and make way for secure acquittals. For example, lynching, a "vile form of collective murder" (Chadbourn, 2008, p. 71), is not mentioned in the IPC and thereby, the law fails to ensure justice to victims of mob violence (see, Citizens against Hate, 2017). It may also be noted that the State machinery, including the police, is genuinely casteist and viciously communal in their approach. They are under the control of the political masters, who, over time, have effectively polarised the groups so that they can act as voting banks for the political parties. Bringing in any specific legislation might be seen as a way to harm a particular voter population.

The Supreme Court, taking note of the burgeoning instances of vigilantism and lynching, issued extensive guidelines including preventive, remedial and punitive measures (*Kodungallur Film Society v. Union of India* (2018); *Tehseen S. Poonawalla v. Union of India* (2018). Again, the court in *Pravasi Bhalai Sangathan v. Union of India* (2014) requested that the Law Commission examine 'hate speech' (Law Commission of India, 2017; Sen, 2017). However, a report of Human Rights Watch, May 2019, points out that states made a half-hearted attempt to comply with the court's directions. (Kumar, 2019).

CONCLUDING REMARKS

A plurality of ideas and diversity of thoughts, beliefs, and cultures underlie Bharat's view (India). That is the essence of a liberal democratic nation which cannot be 'broken up into fragments by narrow domestic walls' (as said by Nobel Laureate Rabindranath Tagore) of caste, creed, race, class, or religion (*Kodungallur Film Society v. Union of India*, 2018). Hate crimes sow the seeds of intolerance, thus engender violence, stifling society's cohesiveness and unity. The State's responsibility is to enact and enforce laws to ensure speedy investigation and prompt prosecution of the guilty, collect and disseminate data on hate crimes, and take preventive steps. The present political regime also must back its rhetoric with fast action to counter this ongoing dangerous trend before it results in a magnitude of disaffection that compels such violence, which could enkindle terrorism. ∎

NOTES

1. The RSS was founded in 1925 and represents an Indian right-wing, Hindu nationalist, paramilitary volunteer organization whose impetus is to help provide character training through Hindu discipline and unite the Hindu community to form a Hindu nation (Andersen & Damle, 1987).

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RÉSUMÉ

Hate Crimes - An Indian Perspective

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Rapportant que les citoyens de l'Inde s'identifient comme des Indiens, sans égard à leur religion, leur caste, leur classe, etc., Mme Dube note que les préjugés véhiculés pendant les périodes de ferveur sociopolitique ont conduit à des affrontements – essentiellement liés aux convictions religieuses et aux castes – que l'on qualifie désormais de « crimes haineux ». L'auteure explore la genèse historique des crimes haineux en Inde, et se concentre sur l'escalade actuelle de ces crimes dans l'Inde contemporaine, en particulier entre musulmans et hindous. Elle estime que ce phénomène constitue une « réponse à la haine par la haine ». Mme Dube décrit comment les crimes haineux sèment les graines de l'intolérance, engendrant ainsi la violence et étouffant la cohésion et l'unité sociales. Elle conclut que l'État est responsable d'adopter et de faire appliquer des lois efficaces, de recueillir et de diffuser des données sur les crimes haineux, et de mettre en place des mesures préventives. Dans cet esprit, elle lance une mise en garde : la rhétorique du régime politique actuel doit être accompagnée d'une action rapide afin de contrer cette tendance dangereuse avant qu'elle n'entraîne un mécontentement d'une telle intensité qu'il pourrait engendrer de la violence, risquant ainsi d'attiser les braises du terrorisme.

Complexities of Hate Crime on People with Multiple Minority Identities (LGBTQ-POC)

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The lines between racial and homophobic motivations for hate crime are blurred, and there is significant evidence to suggest that LGBTQIA2S+ POCs are exposed to dual discrimination and hate because LGBTQIA2S+ identities are considered unnatural (heteronormativity) on the one hand, while racial identities are invisible within mainstream LGBTQIA2S+ discourse (homonormativity) on the other. It is not enough to support LGBTQIA2S+ or POC people when hate crime is involved because race, gender, sexuality, social class, and endless forms of potential difference can also inform the crime. While the Western world has, in recent years, made progress in trying to alleviate the effects of the systemic intolerance of difference, efforts have fallen sadly short. This is because different groups always take each step on parallel but separate paths with their own 'marginalized identities' working individually towards similar goals. This recalls Rome's decree and ideology, 'divide and rule', and the adage of reinventing the wheel.

INTRODUCTION

Since the 1969 Stonewall riots, there have been many beneficial laws, policies, and support worldwide to minimize hate crimes against the LGBTQIA2S+[1] community in the Greenwich Village neighbourhood of Manhattan, New York City. Despite this, however, LGBTQIA2S+ people of colour (POC) are at an increased risk of experiencing hate crime from dual fronts. For example, they have less chance of receiving support because it is unclear which of the two 'identities' was the target of hate crime.

According to various researchers (e.g., Sadika et al., 2020), LGBTQIA2S+ POC are exposed to far more complex forms of discrimination and hate crime than other sectors of society hate crimes. There is significant evidence to support LGBTQIA2S+ POC being exposed to dual discrimination and hate as their LGBTQIA2S+ identities are considered unnatural because of heteronormativity. In contrast, their racial identities are invisible within mainstream LGBTQIA2S+ discourse due to homonormativity.

Due to hate crime offences having an innate need to be classified to a specific group, the relative vagueness of what constitutes a hate crime is blurring the lines for both racial and homophobic motivations. This, in turn, prevents the focus from any specific service or support. It is ironically reprehensible that an LGBTQIA2S+ POC can be responsible for the start of the gay rights movement at Stonewall. Yet, they are the same group which, to this day, is more commonly attributed to hate crime of an LGBTQIA2S+ and/or POC nature (Waters et al., 2016).

HOMONORMATIVITY & HETERONORMATIVITY

Homonormativity happens because of constructs within our capitalist culture and denotes sexual minorities as "white". This homonormativity greatly influences how LGBTQIA2S+ POC and white LGBTQIA2S+ respond to hate crime within the current political climate and is another internalized construct of white privilege. Harris (2009) referred to such constructs as "intergroup marginalization",

Sao Paulo, SP / Brazil - June 21, 2015: People wave a rainbow flag during a demonstration against the high rates of hate crime, violence and homophobia...

by which more privileged group members look down on less privileged members.

Societies accepted invisibility of white privilege makes it possible for white gay men to view LGBTQIA2S+ violence as purely homophobic, as they are the only victim to the rules of heteronormativity. However, when LGBTQIA2S+ POC experienced violence, determining whether it was homophobic or racially motivated was more challenging. As can be seen in Meyer's (2010) study, LGBTQIA2S+ POC often felt that multiple aspects of their identity were attacked because white attackers would regularly mix both homophobic and racial insults. This often prevents LGBTQIA2S+ POC from accessing support from the current services and, inevitably, makes them an almost hidden statistic.

Meyer (2010) also highlighted the systemic racism that LGBTQIA2S+ POC can run into when seeking support from their ethnic community, including family. Many LGBTQIA2S+ hate crimes victims were encouraged to view its severity as less than other violent acts than ethnic communities have to face regularly (e.g., gang-related violence). The victims were less likely to access doctors, lawyers, therapists, or the police.

EXPECTING AND ACCEPTING HATE
LGBTQIA2S+ POC experience violent hate crime at almost twice the rate of white LGBTQIA2S+ people in the United States (Waters et al., 2016). Often, LGBTQIA2S+ POC believe that due to their race, gender, and/or sexual identities, they will, as a matter of certainty, experience violence at some point in their lives. This is partly due to often seeing the results of hate crime within their LGBTQIA2S+ and POC communities, leading them to accept it as a day-to-day occurrence. In contrast, many white LGBTQIA2S+ people know few people who have experienced violence and thus see it as a rare and severe occurrence that warrants reporting, specifically when it is a hate crime that they can easily distinguish to sexuality being the only salient aspect to their identities.

WORLDWIDE
Although much of the research on LGBTQIA2S+ POC comes from North American reports, it is most certainly not an issue solely found in the context. Due to the term 'hate crime' differing across national and international narratives of difference, multi-culturalism, policing, criminal justice, and the rule of law it is challenging to provide valid comparative accounts (Perry, 2014). However, it is a fact that worldwide Brazil has the highest prevalence of hate crime violence against LGBTQIA2S+ people. Between 2011 and 2018, 4422 LGBTQIA2S+ people were reportedly murdered in Brazil (Blondeel et al., 2018). From these reports, transgender women of colour were disproportionality targeted. It seems surprising that with such staggering evidence for the disproportionate targeting of POC within LGBTQIA2S+ hate attacks, that when the 2016 Pulse nightclub shooting occurred in the U.S., the media focus was on the LGBTQIA2S+ aspect of the attack despite the shooting being a direct attack on the LGBTQIA2S+ Latin community, a community that, as observed by Ramirez et al. (2017) was 'Invisible during the crisis'.

CONCLUSION
Canada and the rest of Western society seem to widely use the term 'hate crime' within the context of the growing recognition that the socio-economic imbalance created by white privilege may be an ideological cause of 'racial' hate crime. However, LGBTQIA2S+ hate crime and hate crime of other forms seem less distinguished. They are seemingly thrown in as an afterthought to policies and laws as a stopgap to ensure that all marginalized identities have been accounted for. But this is an impossible task, as hate is a function of difference and thus knows no bounds. As well-intentioned as efforts to include all groups may be, they offer little support to those who experience hate crime as intersectional marginalization.

It is not enough to support LGBTQIA2S+ people or POC when hate crime is involved because race, gender, sexuality, social class, and endless forms of potential difference can inform hate. This changes the way hate is perceived, which is particularly ironic for Canadians, who have long been touted and considered themselves as Tolerant due to Canada's multicultural status.

The Western world has made progress in recent years to try and alleviate the effect of systemic racism and homonormativity. However, efforts have fallen sadly short because these minor steps are taken on parallel but separate paths, with different

groups with marginalized identities working individually towards similar goals. This recalls Rome's decree and ideology, 'divide and rule' and the adage of reinventing the wheel. Hate crime, specifically that which is intersectional and crosses these paths, will continue to escalate until we learn to bridge the divide. ■

NOTES

1. For example, Lesbian, Gay, Trans, Bisexual, Queer, Intersex, Asexual and Aromantic, 2 Spirit individuals.

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RÉSUMÉ

Complexities of Hate Crime on People with Multiple Minority Identities (LGBTQ-POC)

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Les frontières entre les motifs raciaux et homophobes des crimes haineux sont floues, et il existe des preuves substantielles que les personnes de couleur et LGBTQIA2+ sont doublement exposées à la discrimination et à la haine parce que les identités LGBTQIA2+ sont considérées comme étant contre-nature (hétéronormativité) d'une part, tandis que les identités raciales sont invisibles dans le discours dominant LGBTQIA2+ (homonormativité) d'autre part. Il ne suffit pas de soutenir les personnes de couleur ou les LGBTQIA2+ lorsqu'un crime haineux est commis, car la race, le sexe, la sexualité, la classe sociale ainsi que des formes infinies de différences potentielles peuvent également être à l'origine de ce crime. Si le monde occidental a fait des progrès, ces dernières années, en tentant d'atténuer les effets de l'intolérance systémique de la différence, ces efforts ont malheureusement été insuffisants. En effet, différents groupes empruntent constamment des voies parallèles, mais distinctes, selon leurs propres « identités marginalisées », œuvrant ainsi individuellement à la réalisation d'objectifs similaires. Cela rappelle l'idéologie de Rome, « diviser pour régner », et l'adage qui consiste à réinventer la roue.

"Lone Wolf" Assailants in Germany: If They Communicate, They Can be Traced

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This article reports on the recent rise of hate crimes by individual offenders (also referred to as "Lone Wolf") and the extremist cell (the organizational format of "Leaderless Resistance") in Germany. The author outlines how Germany learned its lessons after dealing unsuccessfully with one extremist cell, the NSU, by undertaking a restructuring and reorganization of Germany's security architecture toward increased crime analysis and intelligence-led policing that has led to a reduced incidence of such hate crimes. Noting that the NSU made no communications with the outside world to commit their crime but that that other leaderless groups have been extremely active on social media, Hild concludes that a lone-wolf strategy using a more problem-oriented approach and a focus on detecting social-media communications is key to prevention.

In 2000 the Federal Bureau of Investigation published "Project Megiddo". The report aimed to outline threats and risks of "homegrown" (predominantly right-wing) extremism and terrorism in the new millennium. Drawing on past cases, the risk assessment exposes the threats arising from individual offenders (also referred to as "Lone Wolf") and the extremist cell (the organizational format of "Leaderless Resistance"). At the time of the FBI publication, a small cell of three, which became known as the National Socialist Underground (NSU), was already on its way to committing severe politically motivated offences in Germany. This article discusses how, even though German intelligence services and law enforcement learned valuable lessons in combating group-related, right-wing extremism and terrorist acts, they still have difficulties preventing 'lone wolf' type hate crimes.

As reported in "Project Megiddo", research by Edinger and Schatschneider also linked the radicalization of the NSU to the "Turner Diaries" (2016). The formation of the NSU corresponded to the idea of "Leaderless resistance", a concept promoted by U.S. right-wing extremists such as Louis Beam and Tom Metzger. Between 1999 and 2011, the NSU committed 15 robberies to finance itself, placed three deadly bomb attacks, and murdered ten people. After their last bank robbery, the two male offenders of the NSU were cornered by the police and committed suicide. The third member, a female, was apprehended shortly after, prosecuted, and finally convicted in April 2020 (Welt, 2020).

The serial murders by the NSU represented a new type of hate crime for Germany's intelligence services and law enforcement. This despite the fact that the country has a long history of right-wing terrorist activities. Some of the

significant right-wing hate groups included the "Wehrsportgruppen", a form of right-wing militias, as well as some single offenders, such as Gundolf Köhler, Uwe Behrendt, Kai Diesner, and Michael Berger (Sundermeyer, 2012).

Despite its efforts, Germany's intelligence services and police agencies have received harsh public, media, and political criticism for how they (mis)handled the NSU case. Their inability to deal with the radicalization and terrorism of the NSU, as well as their failure to prevent victimization, lasted for over a decade. Government inquiries resulted in the restructuring and reorganization of the security architecture towards more crime analysis and intelligence-led policing (Pfahl-Traughber, 2013).

SUCCESSFUL INTELLIGENCE AND POLICING
Having learned their lessons, cooperation between the German intelligence and police-community improved significantly. After that, right-wing extremist groups, such as the "Gruppe Freital" and the "Revolution Chemnitz" were traced early enough to prevent their politically motivated agenda from escalating to lethal hate crime. In addition to several other criminal charges, all group members have been prosecuted, convicted and sentenced for establishing and holding a membership in a (right-wing) terrorist organization. Other organizations, such as "Uniter e.V." or "Nordkreuz" became public and were placed under the surveillance of German domestic intelligence services, thereby reducing the incidence rate of such hate crimes (Welt, 2020).

THE ADVANTAGE OF A "LONE WOLF STRATEGY"
Before the bomb attack and mass shootings in Norway, July 2011, Anders Breivik published a 1518-page manifesto. Therein, he referred to a "Clandestine Cell System", his interpretation of "Leaderless Resistance" (p. 830) and explained his motivation for his right-wing terrorist inclinations. As of 2010, he was the first offender in a series of single-acting right-wing terrorists. For example, since the incident involving Breivik, several other high-profile single-acting cases have included Wade Michael Page, who entered a Sikh-temple in Oak Creek/Wisconsin and opened fire with an automatic rifle to murder worshippers in August 2012; Dylann Roof went into a church in Charleston/South Carolina to kill coloured people with an automatic pistol in June 2015; Brenton

Tarrant murdered individuals using an assault rifle because of their belief in the City of Christchurch/New Zealand in March 2019; and, more recently, in October 2019, Stephan Balliet committed a double murder (i.e., victims by coincidence) in lieu of the members of the Jewish community, to whom he could not gain access. Entry was prevented through target hardening of the synagogue in Halle/Germany, where the worshippers were celebrating "Jom Kippur".

All these single-acting, right-wing terrorists shared several common traits. For instance, they evolved from being socially isolated loners into single-acting offenders. Furthermore, except for Mr. Page, the 'lone wolves' made their intentions and justifications thereof public through the Internet, very shortly prior to their criminal acts.

The case of Stephan Balliet exposed, again, a lack of efficiency of German intelligence services and law enforcement to identify, to observe and to prevent hate crimes by the potential individual right-wing offenders. In another such hate-related crime, in February 2020, Tobias Rathjen shot and killed nine immigrants before killing his mother and committing suicide. These and other recent cases in Germany beg the question: "Why could these politically motivated hate crimes not be prevented?"

"THREE CAN KEEP A SECRET IF TWO ARE DEAD" (LAVIGNE, 1987, P. 275)
Successfully organized crime groups follow a strictly enforced code of silence. Neither the Mafia, the Yakuza, the Triads nor Outlaw Motorcycle Gangs ("1%er") are not free to talk openly about their criminal encounters. Failure to comply can and has resulted in grievous consequences for the transgressor. The NSU as well did not communicate with the "outside" world, except through the language of their criminal acts. However, other groups have been extremely active on social networks. Some of these vocal groups display a "tough and rough" image, while others keep a lower and smarter profile. One core discipline of intelligence and intelligence-led policing, however, is finding, reading, and decoding communication. Thus, if there is no communication to find or no indication given where it takes place, reconnaissance thereof becomes a task on the verge of impossibility (Hartleb, 2020).

Frank Steffen, Stephan Ernst, Stephan Balliet, and Tobias Rathjen could all keep their secrets because they were socially isolated individuals and maintained a "Lone Wolf" profile (Hartleb, 2020). All four men had limited social contacts, were socially restrictive even within their core family, but most of them were still living with their parents. All of them had time to plan and prepare their criminal acts. Balliet, in addition, lived the virtual life of an avatar. His communication took place within the chat rooms of his online-gaming. Therefore, in such settings, it is difficult to determine which interactions are part of a 'game' or which present clues to potential underlying criminal intentions.

Consequently, the future of intelligence work and law enforcement in Germany must be of a more "problem-oriented" nature to prevent the single hate-motivated offender from acting out. Furthermore, the detection of their communication, wherever it takes place, is important, because the sheer number of victims and cases they cause is rising. ■

RÉSUMÉ

"Lone Wolf" Assailants in Germany: If They Communicate, They Can be Traced

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L'auteur remercie Thorsten Ulrich, M. Sc., criminologue et conférencier à l'Université fédérale des sciences appliquées (Brühl/Rhénanie), pour sa contribution et son soutien dans la préparation de cet article.

Cet article rend compte de la récente augmentation des crimes haineux commis par des délinquants agissant seuls (aussi appelés « loups solitaires ») et par des cellules extrémistes (prenant la forme organisationnelle de la « résistance sans chef ») en Allemagne. L'auteur décrit comment ce pays a tiré des leçons de son échec face à un groupe extrémiste, le NSU, en entreprenant une restructuration et une réorganisation du système de sécurité du pays en vue d'effectuer une analyse accrue de la criminalité et d'instaurer un maintien de l'ordre fondé sur le renseignement, ce qui a permis de réduire l'incidence de ces crimes haineux. Observant que le NSU n'a pas communiqué avec le monde extérieur pour perpétrer son crime, mais que d'autres groupes sans chef ont été extrêmement actifs dans les médias sociaux, M. Hild conclut qu'une stratégie axée sur les loups solitaires et reposant sur une approche plus centrée sur les problèmes et la surveillance des communications sur les médias sociaux est la clé de la prévention.

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The Role of Hate Speech in Myanmar's Rohingya Genocide

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Sahlin reports on the widespread use of hate speech that led up to the Rohingya genocide carried out by the Myanmar government. By analyzing the UN's report of this genocide through the lens of the still-relevant social identity theory, Sahlin illustrates how stereotypes created through social group identities can lead to dehumanization and pave the way to genocide. Sahlin's study determines that hate speech against the Rohingya people served to wrongly categorize them as illegal immigrants, dark and ugly, ogres, terrorists, extremist, and aggressive criminals - and as homogenous rather than unique individuals. Sahlin concludes that social media plays an important role in spreading hate messages in ways that mirror the processes predicted by social identity theory and that the use of categorizing, stereotyping, and dehumanizing hate speech represents a warning sign that - if heeded - might help evade the next potential genocide.

During August and September of 2018, Myanmar's Muslim Rohingya minority suffered what the UN has classified a genocide at the hands of its government. The military committed heinous crimes against the minority that included, among other acts, setting houses on fire; shooting people; throwing babies into the river; and raping girls and women. As a result, approximately ten thousand people were killed and two thousand brutally raped. Furthermore, almost a million Rohingya refugees fled to neighboring Bangladesh, and now live in the world's largest refugee camp (according to UNHCR, 2018).

It is a fact that hate speech has been widespread and commonly levelled against the Rohingya minority before, during, and even after the cleansing operations. Unfortunately, the hatred has not only been prevalent among "ordinary" people but also leading Buddhist monks, politicians, and military leaders; many of whom have millions of followers on social media such as Facebook (Report, 2020, p. 335).

From a methodological standpoint, to examine what role hate speech has played in the escalation towards the genocide, I have analyzed the "hate messages" from a psychological perspective, namely, that of social identity theory. As data I used the UN report of the Independent International Fact-Finding Mission on Myanmar (Report, 2020). The UN investigators conducted a broad study of hate speech in social media and published the results and examples of hateful words and messages commonly used against the Rohingya.

The psychological perspective that I used was first explored by Tajfel and Turner (1986). Tajfel was a Jewish holocaust survivor. After the Second World War, he sought to explain the processes leading up to the genocide. The result culminated in social identity theory, which has had – and still has – a great impact on our understanding of conflicts between groups of people (Christie, 2011, p. 1019).

The theory can be summarized as follows. As humans we *categorize* ourselves and others, and place individuals into groups. For example, social groups can be based on ethnicity or religion, or other social indicators. Through membership in a group the members derive a social identity. By comparing the groups, the members of one group

can create a positive *distinction*. In essence, by thinking that their group is better, the self-esteem of the members is enhanced. As the groups are more-and-more distinctive compared to one another, the individuals in the other group are stereotyped and the group appear more *homogenous*. Instead of presented as unique individuals the members are seen as stereotypes with the same social identity. Consequently, this can lead to *dehumanization*, especially if the other group is seen as a threat (Tajfel & Turner, 1986). The members of the other group are seen as less than human and often described as animals without individuality or worth. Dehumanizing language or depiction can be used to legitimize violence against the other group and the brutality can sometimes escalate into a complete genocide (Stanton, 2004).

In my study, I compared the hate speech compiled in the UN report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar with the elements of social identity theory. This was conducted to see whether the hateful messages were of the kind that can be expected from the theory. Next, I summarize some of the key findings. A common phrase that has been used to describe the Rohingya is "Khoe Win Bengali", which means Bengalis who snuck in. This is a common theme among the messages that has been spread through social media. Even though the Rohingya have lived in Myanmar for generations, they are still seen as illegal immigrants who are a supposed threat to the country. This is but one example of social categorization where the Rohingya are categorized as, in this instance, illegal immigrants, which in turn are compared to the "Indigenous" Buddhist majority.

As alluded to above, other examples of hateful language have served to differentiate the groups even further. For instance, the Rohingyas are described as dark and ugly, as ogres, while the Burmese are described as having fair and beautiful skin. As anticipated by social identity theory, the Rohingya population are also described as homogenous rather than unique individuals. All Rohingyas are, for instance, described as terrorists, extremist, and aggressive criminals. Plenty of other dehumanizing language has also been levelled against this minority; the Rohingya are called 'Muslim dogs' and flies who suck the blood out of the Burmese people. Since dogs are regarded as

one of the lowest types of animals in Myanmar, these expressions are clearly dehumanizing. This type of dehumanizing messaging has also been directly used to legitimize the ethnic cleansing by stating that accusations of genocide are false since those who are being killed by the army are not people but animals and without worth.

In Myanmar, apart from such further categorizations, the Muslim Rohingya minority were already marginalized because of their distinct social identity given by their ethnicity and religion. They are thus always-already seen as being different from the Buddhist majority; however, through hate messages the differences between the groups have been fueled and heightened. This additional labeling and dehumanizing have led to downplaying individualism; namely, the differences among individuals in the group, which is also predicted by social identity theory. This kind of "de-individuation" has most certainly laid the groundwork for dehumanization which has been a most prevalent kind of hate speech. Because the Rohingya are seen as foreigners, having nothing in common with the majority, and labelled with a social identity as that of worthless animals, this dehumanizing process has provided the foundation of legitimizing and "justifying" of the Rohingya genocide.

The negative social identity of the Rohingya has in part been created by hate speech from prominent religious, political, and military leaders in Myanmar. The negative social identity has also been magnified through the extensive hate speech that spread among the population. This has mainly occurred through the Internet and social media. One of the leading researchers in the field of social identity has pointed out the same effect; Abrams (2015) notes that today's technology, which enables instant communication between an innumerable number of group members, makes the extent and effect of social categorization and the subsequent processes of dehumanization and hatemongering extremely potent.

The results of my research illustrate the role of hate speech in the ethnic cleansing of the Rohingya people and how social media can play an important role in spreading hate messages in ways that mirror the processes predicted by social identity theory. An instructive message from the research findings

is that, with an understanding of these effects, similar tendencies in other conflicts (e.g., Black Lives Matter, Indigenous peoples, and in countries like Mali, Syria, and South Sudan) can be identified at an earlier stage and procedures put in place to reduce the risk of any hate-related incidents occurring. In this way categorizing, stereotyping, and dehumanizing hate speech can be used as a warning sign, and if heeded, the next potential genocide might be evaded. Additionally, the results also show that social identity theory continues to be an important explanatory model for our understanding of inter-group conflict. Finally, an in-depth understanding of the theory might also be useful to mediators, diplomats, and others who work for the resolution of these kinds of conflicts. ■

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RÉSUMÉ

The Role of Hate Speech in Myanmar's Rohingya Genocide

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L'auteure se penche sur le recours généralisé au discours haineux qui a mené au génocide des Rohingyas perpétré par le gouvernement du Myanmar. En analysant le rapport de l'ONU sur ce génocide sous l'angle de la théorie de l'identité sociale, toujours pertinente, Mme Sahlin illustre la façon comment les stéréotypes créés par les identités des groupes sociaux peuvent conduire à la déshumanisation et ouvrir la voie au génocide. Son étude établit que les discours haineux contre le peuple rohingya ont servi à le catégoriser, à tort, comme un peuple sinistre et homogène composé d'immigrants illégaux, d'ogres, de terroristes, d'extrémistes et de criminels agressifs. L'auteure conclut que les médias sociaux jouent un rôle important dans la diffusion des messages haineux, reflétant ainsi les processus prédits par la théorie de l'identité sociale. Elle note enfin que le recours aux discours haineux catégoriques, stéréotypés et déshumanisants constitue un signe avant-coureur qui pourrait permettre d'éviter un nouveau génocide.

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De plus amples informations seront fournies dès qu'elles seront disponibles. Merci à tous ceux et celles qui ont envoyé des propositions au Congrès jusqu'à présent. Celles-ci seront conservées et nous accueillerons volontiers d'autres propositions.

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